Q. They do now? A. Yes, and they permit us in California to continue.

Q. You mean they permit you to go down there and solicit accounts? A. Yes.

Q. By that you mean you have not been charged with violating the law? A. No. No, I had a very nice talk with the Deputy Insurance Commissioner two weeks ago. We are able to qualify and probably will in the very near future.

Q. Are you qualified to do business in any other state? A. No, just those two.

Q. Just recently in Washington, and you hope soon in California? A. That is right.

Q. What is your compensation at the National Hos-
526 pital Association?

Mr. Marcus: An objection, your Honor, on the ground of irrelevancy.

The Court: Overruled.

A. Well, my present salary is $20,000 a year.

Q. How long have you had that salary? A. This is the second year.

Q. What is that? A. Prior to that it was fifteen, and prior to that it was ten.

Q. How long ago was it as low as ten? A. 1941 was ten, I think.

Q. What is the capitalization of the National Hospital Association? A. $150,000.

Q. $150,000. Is that fully paid? A. Fully paid and a surplus.

Q. Fully paid and what? A. And a surplus beyond.

Q. How much surplus? A. I think the Insurance Department gives us about $100,000 or $150,000.

Q. How much of that capital stock, if any, do you own?

Mr. Marcus: Your Honor, I object again on the ground of irrelevancy to the entire line of questioning.

The Court: It goes to his interest.

527 Mr. Marcus: What?

The Court: It goes to his interest.

Mr. Marcus: Well, he has already stated that he is the general manager of the Association.

The Court: Well, Mr. Marcus, that may satisfy you, but it does not satisfy counsel. He wants to show his full interest.

Mr. Marcus: Yes, but my objection is to the irrelevancy. I know Mr. Jaureguy wants to know.

The Court: I think it should be very plain it would show the interest of the man when he makes something out of it. Continue.

The Witness: Your Honor, some of those things are personal.

The Court: Oh, there is nothing personal in a court of law unless it is privileged, and that is a very narrow field. Go on with your question.

Mr. Jaureguy: I think he got the question.

The Court: Ask it again.

Mr. Jaureguy: How much of the capital stock do you own? A. A large per cent.

Q. How much? A. Quite a large per cent.

The Court: How much, he wants to know. A. About seventy per cent.

Q. Seventy per cent. Have you acquired ten per
528 cent since you gave your deposition? A. No. No, I haven't. You didn't ask that question before, did you?

Q. Pardon? A. You didn't ask that question before, did you?

Q. Yes. A. Did you? What did I tell you then?

Q. Pardon? A. What did I tell you then?

Q. The deposition, I think, will show sixty per cent, but it might have been a stenographic error. A. I think maybe he misunderstood it.

Q. After your deposition was typed you took it and read it over and made changes in it. A. Well, if I made that statement, that is what I said.

Q. And the corporation has paid substantial dividends, too? A. No, it hasn't.

Q. Since when? A. There hasn't been a dividend since 1940.

Q. Is that when you have been creating this $100,000 surplus? A. No.

Mr. Jaureguy: I will have some more here in just a moment.

The Court: If I thought your cross-examination was about finished we would run on until we finished it. If you are going to continue for quite awhile we will adjourn.

529 Mr. Jaureguy: I don't think it will take me very long. I have quite voluminous notes.

The Court: We will adjourn until 10:00 o'clock Tuesday.

(Thereupon an adjournment in the above case was taken until 10:00 A. M. Tuesday, October 25, 1949.)

530 Court reconvened at 10:00 o'clock A. M., Tuesday, October 25, 1949.

C. C. Bechtold, a witness on behalf of Plaintiff, having been previously duly sworn, resumed the stand and further testified as follows:

Mr. Marcus: We have this matter of the time schedule. I don't know whether you would like to hear it now or later.

The Court: Later in the day, I will talk to you.

Cross Examination (Continued)

By Mr. Jaureguy:

Q. Mr. Bechtold, Friday we were discussing the matter of the National requiring doctors to obtain authorization in advance to do certain things. As I understand it, your testimony is that you never required any authorization in advance; you merely warned the doctors that they find out before they went into any extensive work whether or not the members were covered by the National. A. That is true. Doctors at no time are required to get authority from the National Hospital Association to perform any service. We consider that as a matter between the doctor and his patient.

However, if it is expected the Association shall assume the charges, then, in that event, they are presumed to get authority to operate at the expense of the Associa-

531 tion.

Q. That is for the purpose of determining whether the particular work involved is under the protection of the National? A. Or the particular case.

Q. Or the particular case. A. I might explain that there are many times that we have no knowledge of a patient being under coverage until we have had an opportunity to check with our records or check with the employer's records to determine his standing with the Association.

Q. I would like to hand you two letters which have been marked as Defendants' Identification No. 1872 and ask you whether the letter you wrote there was pursuant to that policy.

Mr. Marcus: I wonder if we could see those letters? We have not seen anything Mr. Jaureguy has in the way of documents.

The Court: Take them over to Counsel. How about showing your exhibits, whatever you are going to use from now

on, so as to save all this time of the Court? That is the point of our pre-trial practice here.

Mr. Jaureguy: I do not have them all.

The Court: Why don't you get a day or two ahead of your schedule so you can show your exhibits to him in advance?

Mr. Jaureguy: I will, your Honor. I haven't caught up with the schedule yet, but I will do that.

The Court: Yes.

Mr. Jaureguy:

532 Q. Does that letter you wrote carry out that policy you have spoken of? A. Yes.

Q. I wonder if I could have that exhibit back? This is a letter you wrote to Dr. Inskeep: "We are just in receipt of notification from the Sacred Heart Hospital in the case of James Clark, in which they advise this patient is in a private room. We have no record having authorized a private room in this case and we, therefore, would appreciate a complete report from you showing the necessity for special care."

If one of your members goes to a hospital, what are the circumstances under which the patient is or is not entitled to a private room? A. That depends on the seriousness of the case. If, in the judgment of the attending doctors, a private room is required, it is permissible under the contract.

Q. But in this case you called attention to the fact that you did not authorize a private room. A. That is true.

Q. Who determines it? You say "the judgement of the attending physician." Who determines— A. We have asked the question, you will notice, of the doctor as to the condition of the patient, so as to determine responsibility.

Q. "We have no record of having authorized a
533 private room in this case." A. That is right.

Q. And, therefore, you take the position that before a patient may go into a private room, after the patient gets into the hospital, before he can go into a private room you must authorize that? A. No, that is not our position. Our position is this: Under the contract there are certain conditions under which a patient is eligible to a private room. If those conditions exist, then he would be entitled to that service at the expense of the Association. We do not deny the use of a private room if he wishes to obtain one, if he can pay the difference between a private room and the ward charge.

Q. Didn't you just say whether or not he is entitled to a private room, at the expense of the Association, depends on

the judgment of the attending physician as to whether he should have a private room? A. I am going to come to that, Mr. Jaureguy. If, when notice is received from the hospital that a patient has been admitted and the hospital says that the patient is in a private room, then, to determine whether or not the patient is eligible, we must communicate with the doctor to determine, to learn the seriousness of his case.

Q. Why is it necessary for you to determine the seriousness of the case if the doctor is satisfied of the seriousness of the case? A. Because we are expected to pay for the charge.

534

Q. That is exactly what I am getting at. Therefore, you do require that the physician communicate with you and obtain your consent before authorizing a private room at the expense of the Association? A. The Association will authorize the hospital to charge the private room to the Association if the doctor said the condition of the patient required it.

Q. So you require the doctor to report his recommendations to you and then you, and not the doctor, authorize the hospital to give the patient a private room? A. We authorize the hospital to charge the private room to the Association.

Q. But, according to this letter, you want the doctor's report before the patient gets a private room? A. That is the only way we would have of determining eligibility, Mr. Jaureguy.

Q. Eligibility, you have told us, depends upon the judgment of the doctor as to whether the patient requires a private room. A. That is correct.

Q. Why is it necessary for the doctor to communicate with you before he authorizes the private room? A. If we didn't do that, probably the hospital would have some difficulty in their account.

Q. Collecting from you? A. Yes. They probably would have, if we didn't authorize it. Then they would probably send us a bill for the ward service, and then send a separate bill for the private room. It is simply a matter of clearing the account, so we know whether it is our responsibility or not.

535

Q. Nevertheless, you do insist, whether it is for the purpose of records or what, that before a doctor authorizes a hospital to put a patient in a private room he must—before he authorizes a hospital to put a patient in a private room at your expense, he must communicate with you and you must authorize the hospital to do it? A. Not in emer-

gencies; if a person requires a private room, the patient is placed in a private room and, if investigation discloses that it was a condition requiring quiet surroundings, the account is assumed by the Association.

Q. What I have said is true except in cases that you feel are emergencies? A. Well, Mr. Jaureguy, I think you are trying to confuse my language. That is not the case. I repeat: It is for the purpose of facilitating the settlement of accounts that authority is requested in advance.

Q. Yes. A. However, if a person is in such condition or the condition is of such critical nature as to require a private room, and we have not been notified, and we later learn what the true circumstances are, the account is assumed by
536 the Association, provided authority had first been obtained.

Q. If it is not an emergency, and the doctor thinks the patient needs a private room, and, so, asks the hospital to put the patient in a private room, without authorization you will assume the account? A. Yes, we do. We do assume the account if it shown later that the case did require private surroundings.

Q. Whose opinion or judgment determines that, yours or the doctor's? A. The doctor's.

Q. Then why is it necessary to get authorization in advance? I have got to come back to that question. A. Mr. Jaureguy, I repeat: They do not have to get authority in advance. It facilitates the payment of the account by getting it in advance.

Q. Why did you say in this letter, "We have no record of having authorized a private room in this case"? A. Well, for the simple reason we wanted to know if it required a private room, and that is the way we have of expressing ourselves to the doctors.

Q. Did you think Dr. Inskeep was trying to slip something over on you? A. I don't even know the case.

Q. Very well. A. I am not questioning that.

537 Q. I will go on to another one. I want to hand you Defendants' Identification 1873.

Mr. Marcus: I want the record to show that they have been marked for identification.

Mr. Jaureguy: Yes, they have been marked for identification.

Mr. Marcus: Yes.

Mr. Jaureguy:

Q. This is a letter to Dr. Pitman of Hillsboro: "We received your statement for the care of——" an employee named there, of the Simpson Lumber Company,—"whom you treated for a ulcer of the stomach. We note you have made a charge for a fluoroscopic examination of the stomach February 2nd. We do not find a record of this case having been reported to us and authority obtained for this examination."

Do you require, before doctors make a fluoroscopic examination of a patient, that they get authority from you? A. What is the date of that letter?

Q. March 28, 1936. A. Well, it is going back quite a ways. I didn't write that letter, did I?

Q. No, Mr. Page wrote it. A. I would prefer to have Mr. Page answer that question.

Q. I would like to have the Reporter read the question and see if you can answer it.

538 (Question read.)

A. The answer is No.

Q. Do you know why that letter was written by Mr. Page, calling attention to the fact that he did not get authority for a fluoroscopic examination? A. It is thirteen years ago, Mr. Jaureguy. I don't remember the circumstances that led up to that.

Q. Then I will hand you Defendants' Identification 1874, which appears to have been sent by you and not by Mr. Page. A. Yes. Go ahead.

Q. This is a different doctor. This is Dr. Dodson of Medford. "We have for acknowledgment your letter of October 18th requesting permission to remove tonsils and to make a GI study for"—an employee who is named—"of the Southern Oregon Sales, Inc., and in reply, if this man is a steady employee of the above company, this letter is your authority to remove his tonsils."

So you told him if he was employed—you gave the doctor authority to remove the tonsils? A. If he is a steady employee.

Q. If he is a steady employee? A. Yes.

Q. You felt there that you had to give the authority, even though he was employed? A. If he was a steady employee, he would be entitled to it; if he was a transient employee, he would not.

Q. Why didn't you say "We find he is a steady em-
539 ployee, so go ahead and take care of him"? A. We didn't know. We told the doctor. The doctor is supposed to know, in that community, if he is steady or not.

Q. Why didn't you say, "If he is a steady employee, then you may proceed with what is necessary"? A. We did.

Q. You say, "If he is a steady employee, this letter is your authority to remove his tonsils." A. Right, at the expense of the Association.

Q. In the next paragraph you say: "However, before authorizing the GI study, we believe you would do well to await the results of the tonsil operation, as infected tonsils may be causing his intestinal disorder."

Did you think it was up to you or the doctor to determine whether or not the GI study should proceed? A. Mr. Jaureguy, with our experience, sometimes we can offer suggestions we think are quite beneficial to the patient. You notice we just suggest. We couldn't see any harm in making suggestions to the doctor that that be done.

Q. So you feel that you, as a layman, never having seen the patient, are in a position to give suggestions to a doctor of medicine who has seen the patient? A. Well, I think—I think probably through our experience we are in a good position to give some suggestions.

Q. Would you answer the question, please?
540 A. What is the question?

The Court: Read it.

(Question read.)

The Court: What is that about tonsils causing intestinal trouble, in that letter?

Mr. Jaureguy: However, before authorizing the GI study we believe it would be well to await the results of the tonsil operation, as infected tonsils may be causing his intestinal disorder."

The Court: Who wrote that letter?

Mr. Jaureguy: Mr. Bechtold.

Q. You think you, as a layman, who had not seen the patient, were in a position to suggest to the doctor, who had the patient, that infected tonsils might be causing his intestinal disorder? A. Mr. Jaureguy, we were expected to pay the bills, and we did not think we were out of order when we suggested that to the doctor. We didn't tell the doctor to do it. We just suggested it.

Q. I am not questioning you about the justification, now, for your doing that. That will be gone into later, not in questioning you but in our argument.

What I am questioning you about is whether you were truthful Friday when you said you did not require doctors to obtain authorization before treating patients. A. Very definitely truthful.

541 Q. All right. Do you think, in those three cases I have called your attention to, you were not requiring them to ask your authorization before doing these things? A. No, we were not, Mr. Jaureguy. Thirteen or fifteen years ago we had very friendly relations with the doctors in various sections, and they spoke very freely with us and often asked our advice about them, and we would refer these things to some of the medical men here in Portland, and get their opinions and pass it on to the men outside.

Q. From what medical men did you get the opinion that the tonsils in this case might be causing the intestinal disorder? A. That is away back fifteen years. I don't know—pretty long.

Q. You did not get the opinion of anybody, did you? A. Did I?

Q. Yes. A. Well, as I say, it is fifteen years. I don't recall. But we usually did, yes. They were seeking advice, so we would write.

Q. After telling the doctor, in this instance, that it was well for him to wait to determine whether the tonsils might be causing the intestinal disorder, you added, "If you do not agree with us on this point, we will be pleased to hear further from you." A. Yes.

542 Q. That is, you invited him if he thought that you were mistaken to write to you and explain his reasons why he thought that he should proceed with the g.i. study? A. Yes, that is very true.

Q. By the way, what is a g.i. study? A. Well, it is a gastrointestinal study.

Q. What was your schedule in 1935 for a g.i. study? A. I don't remember.

Q. Do you think it was as much as $15.00? A. I wouldn't recall.

Q. It wasn't more than that, was it? A. Whatever the schedule was we paid anyway.

Q. How do you know? You don't know whether he conducted a g.i. study, do you? A. Beg pardon?

Q. You don't know that Dr. Dodson had a g.i. study made, do you? A. Well, I know a lot of doctors in those days didn't have X-rays.

Q. Now we also discussed the other day the matter of X-rays. Do you remember that? A. I believe we did.

Q. And what is the requirement of the National? Do they require doctors always to forward their X-rays to you in order that you may determine whether they are good
543 or bad or what? A. No, not always.

Q. Not always. I will hand you Defendants' Pre-Trial Exhibit 1447 and ask you to glance that over. Take whatever time you want to get acquainted with the case.

Mr. Marcus: Just for the sake of the record, I think that is our exhibit.

Mr. Jaureguy: Oh, yes, Plaintiff's. I forgot which side I was on.

The Witness: What is your question?

Mr. Jaureguy:

Q. I wanted you to become acquainted with what the case is about. Now this is a case, is it not, where the member broke a bone in the leg above the ankle on January 17, 1943, and the doctor's services terminated in February, 1943, and in October, 1944, you had not yet paid the account, sixteen months later, and you gave as your reason for not paying it that you had not yet received the two X-ray films that had been taken. Now that is correct, isn't it? A. Yes.

Q. And in that letter you wrote this to the business agent of the IWA local at Forest Grove, October 11, 1944, as I say, eighteen months later—no, twenty months after the services had been completed, and you said to the business agent in this letter of October 11, 1944: "You will also find enclosed a copy of a letter addressed to Dr. Pitman. In accordance with our telephone conversation today I know you understand the reason the Association asks doctors to produce their films for X-ray readings,
544 as this is the only way we have of protecting the member against X-rays that are worthless." How do you protect the member against X-rays that are worthless? Who pays for the X-rays, you or the member? A. Mr. Jaureguy, the member is the most important person in this transaction.

Q. Yes. A. Many times X-rays are taken that are valueless, and X-rays are taken and read by men who are unqualified, and a wrong diagnosis is given.

Q. Yes. A. And we don't figure that the member should be exposed to those dangers.

Q. Pardon me. Did you hear my question, Mr. Bechtold? A. I thought I did.

Q. The question was, who pays for the X-rays that are worthless, the member or the Association? A. Well, sometimes neither.

Q. Pardon me. I will have to change the question. If X-rays that are worthless are paid for, who pays for them, the member or the Association? A. Well, if they are paid for, they are paid for by the Association.

Q. Were you correct, then, when you stated to this union member that you had to see the X-rays because that is "the only way we have of protecting the member
545 against X-rays that are worthless"?

Mr. Marcus: Mr. Bechtold has just answered that part of the question.

Mr. Jaureguy:

Q. Is that a correct statement that you made? A. Yes.

Q. In other words, if X-rays are worthless, but they are paid for, they are never paid for by the member, as I understand it? A. Not to our knowledge.

Q. Then why is it necessary for you to examine the X-rays for the purpose of protecting the member? A. Because if an X-ray is worthless we would expect another X-ray to be taken.

Q. You mean twenty months later? A. No. Probably that has been done, too.

Q. That has been done? A. Yes, surely. It depends on the circumstances of the case.

Q. In this same letter of October 11, 1944, you said to the business agent of the union: "And while we are not questioning Dr. Pitman's X-rays, if we made an exception in this instance it adds to our difficulties in the future. Therefore, we would very much appreciate your cooperation." Was that a correct statement? A. Yes, if I made it.

Q. So you were not questioning the X-rays in this case? A. Apparently not.

546 Q. So after the services were performed you nevertheless refused to pay the bill unless you got the X-rays which you were not questioning? A. I think we did in that case. That is right.

Q. Will you look at this file and see if you ever paid the

bill? A. Yes, we did. I am sure without looking at the file. I know we paid it.

Q. Look at the file and show me where. A. Well, we paid the man on it.

Q. Look at the file. That would be in your file if you paid him, wouldn't it? A. I don't know whether it would or not, but I am sure it was paid. I remember this case quite distinctly. It came on shortly after the doctors out in Forest Grove and Hillsboro had boycotted the National Hospital Association.

The Court: Talk up louder. Nobody can hear you.

A. It came on shortly after the doctors in that district had banded together and boycotted the National Hospital Association. When the bill first came in in those days we asked for the X-rays to be sent in, and Dr. Pitman refused to send them.

Q. Do you understand when you fail to pay one of your members you are in some way taking it out on the doctor? A. No, that is between the member—between the doctor and his patient. If the patient wishes to pay it, that is his business.

547 Q. As a matter of fact, this was almost four years after this so-called boycott started, wasn't it? A. Well, the boycott was still on, Mr. Jaureguy.

Q. What is the significance of your statement, then, that you refused to pay the member because it was shortly after the boycott started?

Mr. Marcus: Mr. Bechtold didn't say that he refused to pay the member. I would like to have the record straight on that.

Mr. Jaureguy: Yes, I asked him if he had paid the member, and his answer was this was shortly after the boycott started.

Mr. Marcus: He already said he had paid the member.

Mr. Jaureguy:

Q. Did you find anything in the file indicating that you had paid the member? A. No, but I could look that up too.

Q. I would like to ask you this question: When you turned over these files of a case like this one—it is about seven or eight or nine pages—did you turn over the entire file or just part of it to the Government attorneys? A. Well, I think there is probably a bill in the paid file. We could look up, if you care to have me. I know the account was settled.

Q. While I am on the subject, I want to ask you to answer this question: When you turned over these files of individual cases to the Government attorneys, did you
548 turn over the entire files or did you leave something out? A. They found those. I didn't.

Q. So that if any part of a case is left out it is the Government attorneys that did it and not you? A. Well, I didn't remember turning that over to them. They found that or the FBI found it, I don't know which.

Q. If part of a file is missing, was that your office that took out parts of it or was it the Government attorneys that took it out? A. Nothing was taken out of any of our files, Mr. Jaureguy.. Nothing.

Q. Then if it turns out it was taken out the Government attorneys did it or the FBI man? A. No, I don't think probably it was ever in that file. I think probably it is in a different part of the office.

Q. Now, I would like to give you another one of the Government's exhibits here. That is Pre-Trial Exhibit 1482. Will you look over that and see if you can refresh your memory on the case. I think you can. A. Yes, I know that case.

Q. Would you let me have that, please. I will give it back to you if you want to refer to it. Now, is it true that this file shows that prior to July 31st, 1947, you had in your files the following information: That in March, 1944,
3 years and four months before you wrote that let-
549 ter, one of your members who had been paying his dues from November, 1941, suffered a stroke in March, 1944. He entered the Columbia Hospital on March 28, and you had paid his hospital bill in full long before 1947, and you, knowing the nature of his illness—it was a stroke—several bills had been sent to you, doctor's bills of $334.00, and the hospital records showed that the doctor who sent the bills was the doctor who had treated the patient, and on July 31, 1947 you refused to pay the bill because the doctor refused to furnish the Association with a report of his service. A. What is your question?

Q. Whether that is not a correct resume of the facts. A. No.

Q. What is missing, or what was said that is not true? A. Well, it is quite a complicated question.

Q. Well, mention any of the facts I have stated which are not true from that file. A. The file is not all here. There is more.

Q. Oh. A. That is right. No fooling.

Q. But my question is based entirely on the file that is here. Did you know all those facts when you wrote that letter? A. I think I can state the facts.

Q. There is one more fact, too: You knew that this man died in 1944 and that his widow was on public relief and you were refusing to pay his widow? A. I didn't
550 know that at the time, no.

Q. Now, let me show you, please. You sent a carbon copy of this letter to the Clatsop Public Welfare Commission, did you not? A. Wait just a moment. What is the date of this? When did the man die, do you know?

Q. He died in March, 1944, and you sent that letter in 1947, at the time you refused to pay his widow. A. At the time he died we didn't know she was on relief, but that wouldn't have made any difference anyway.

Q. It wouldn't have? A. No, not a bit.

Q. Let me show you your file that you had in your office before that. Oh, yes, the County Public Welfare you told about that. A. Yes.

Q. Now, is there anything in that file showing that you ever sent a letter either to the widow or to the doctor asking for an itemized statement? A. Oh, yes, there is a letter that shows that.

Q. Find it. A. Well, not here. I say the file is not all here.

Q. You think the FBI if they found a letter like that left it out, do you? A. Well, Mr. Jaureguy, I am sure that so far as the National Hospital Association is
551 concerned we have not taken any papers out of our file.

Q. I understand that you have so testified, so if you did send a letter like that, why, the FBI left it out of that file? A. The FBI didn't find all of it. There is more to this file. You will find we wrote the doctor several times.

Q. Do you remember a statement I made asking if it was true as to what your file showed, and you haven't answered yet whether I made a correct statement of what your file showed, the file that is in court showed.

Mr. Marcus: I object, your Honor, on the ground that is utterly irrelevant. If he knows the details to fill in with respect to those papers, let him tell that.

Mr. Jaureguy: I am not talking about things except what is in the file that is now in court in the witness' hands. If he doesn't remember my statement, I want the reporter to read it and have him tell whether it is true

or not. A. You would like to have me answer the question on the basis of the information that I have in my hands here?

Q. That is right. A. What do you want me to tell you?

Q. I want you to tell me wherein, if at all, I misstated any of the facts that appear from that file. A. Well, Mr. Jaureguy, the file is not here. I can only tell on the
552 basis of the information here that probably your question is all right. But the information is not there.

Q. In other words, there are additional facts that I didn't state? A. That is right.

Q. The facts I stated are true, but there may be additional facts? A. Yes. You are misinformed.

Q. Well, tell us what the additional facts may be, then. A. You want me to tell those?

Q. Yes. A. Well, this is my recollection. I would like to search the files for the remainder of that—search our records for the remainder of that file.

Q. I can refresh your memory, and tell you that after you wrote this letter the widow employed an attorney, and then you gave the attorney an entirely different reason for not paying the bill. A. Oh, no.

Q. And that was that you would only pay it to the administrator of the estate.

Mr. Marcus: I would like to have Mr. Bechtold tell the story and not Mr. Jaureguy.

Mr. Jaureguy: All right. Let him tell it, and then I will correct it.

553 The Witness: I had forgotten that, Mr. Jaureguy.

Mr. Jaureguy:

Q. You remember now that the widow did employ an attorney? A. Yes, that is right, and he was a very nice fellow, too.

Q. Different from the doctor, then? A. Well, the doctor is all right, too. He only got on the wrong side of the fence. This case, your Honor, as I recall it, was the husband of a widow who later was on relief, and he worked for Clatsop County. He had a stroke and he was placed in the Columbia Hospital, I believe. Following the usual procedure of the Association, when the bill came in from the Columbia Hospital it was paid, because it was found in order. The bill didn't come from the doctor. In time, how-

ever, there was a bill sent to us that the doctor had sent to the widow.

Q. You mean three different bills on three different occasions? A. May I proceed, Mr. Jaureguy?

Q. Yes. In March, 1945, June, 1947— A. I was coming to the first bill.

Q. Oh, the first bill. A. The bill was sent in from the widow, $334.00. There was no itemization of the bill, and I think the records will show that in the meantime we wrote Dr. Straumfjord for an itemization of his services.

The doctor in the meantime had joined in the boy-
554 cott in Clatsop County against the National Hospital Association and refused to furnish us any information, without which we could not pay the bill.

Q. You could not? A. No.

Q. You couldn't get enough information from the hospital records? A. Well—

Q. What do you mean by "his bill"? We are talking about payment to the widow. A. No, we couldn't pay the widow or we couldn't pay him, either one, because we didn't have sufficient information on which to base our payments, and the doctor persisted in refusing to furnish the information. Finally, I am coming to your attorney.

Q. Before we get to the attorney—

Mr. Marcus: Your Honor, may he be allowed to finish this story.

The Court: He is doing all right.

555 Mr. Jaureguy:

Q. Before you come to the attorney, you had the hospital records examined, didn't you? A. Yes, we did, I believe. Now, I say we did, but, Mr. Jaureguy, you will have to pardon me. I am not trying to avoid, but I just don't know the dates.

Q. And the hospital records would show what the doctor did, wouldn't they? A. No, they wouldn't by any means.

Q. Well, they would show part of what the doctor did, wouldn't they? A. I would presume they would, but, as a matter of fact, I don't think the doctor did much in this case. It was a stroke and he couldn't do much for him.

Q. Well, he was there a month—I think he was there longer than that. A. Oh, longer than that.

Q. Yes. Oh, yes, yes. A. He was there a long time.

Q. He was there from March 28th to August 29th. A. A long time, I know that.

Q. And the hospital records would show whenever the doctor called on him, wouldn't they? A. Since this seems to be such an important case, I should like, your Honor, to have the privilege of trying to find the balance of that record.

556 The Court: All right.

Mr. Jaureguy: I think I can help you out on that.

The Court: If he wants to do it that way, let him look at his own record during the noon hour.

Mr. Jaureguy: I wonder if I could show him the record I have.

Q. I am handing you now Exhibit 1876 for identification and ask you to look at that record and see whether or not when the attorney, this nice attorney, wrote you, whether you then didn't change your position and say you refused to pay the bill because you could only pay it to the administrator of the estate? A. On the advice of our attorney—you brought out that point. I forgot to tell you about that. I think you and the attorney will agree that he was right, since the deceased—the account concerned the deceased and we were advised by our attorney, Colonel A. E. Clark, that the money should be paid to the estate instead of the widow.

Q. You have a letter to that effect from Col. Clark? A. I think we have, or it is advice over the telephone.

Q. Before I forget it, I understand, then, if a working man is injured or ill and incurs services and then dies that you will not pay the bill unless his estate is probated? A. I wouldn't say that is always the case, no. The circumstances would influence us in our decision there.

Q. But, anyway,— A. In this particular case
557 we were advised by our legal, by our attorneys, that it should be paid to the estate, and I think that is according to the proper procedure, is it not?

Q. And when you wrote to the widow, as shown by the Exhibit 1482, why didn't you state to her that was your reason, or one of your reasons, for not paying? Did you hear the question? Did you hear the question, Mr. Bechtold? A. Pardon?

Q. When you wrote to the widow, as shown in Pre-Trial Exhibit 1482, in July, 1947, almost three years after the death, why didn't you tell her that your reason for not paying the bill was that the estate had not been probated? A. Well, I have that letter here. I say "Please be advised that the reason your husband's account has not been paid is that Dr. Straumfjord, who we understand was

your husband's physician, has refused to furnish the Association with a report of his services, which is necessary to enable the Association to consider the claim." That is very true; and, also, this entered into it very definitely, the fact that our attorney advised us to pay it to the estate, we still would have to have the itemized bill.

Q. Was it your plan after you wrote that letter that after you got the itemized bill and after she went to the expense of probating the estate you would pay her the $202? A. What?

558 Q. Was it your plan, after you wrote that letter, after you got the itemized statement, that you would then write to the widow after that trouble that if she went to the expense of probating the estate you would pay her as administratrix $202? A. Is that what we paid her?

Q. That is what you finally paid her attorney. A. Then we got the itemized statement, do you remember?

Q. Would you answer the question I asked you? Do you remember the question? A. No, I don't.

Q. Well, I will ask it a third time, then. When you wrote that letter to the widow in July, 1947, saying you wouldn't pay unless you got an itemized statement, was it your intention that after you got the itemized statement you would write her another letter telling her if she went to the expense of probating her husband's estate you would pay her $202? A. Did I write that letter?

Q. No. Was that your intention to do so? A. No.

Q. No. You didn't intend to then? A. We intended, Mr. Jaureguy, to pay what was proper on the account, and in order to know what was proper on the account, according to this man's contract, we had to know what services were rendered. That is what we were asking for.

559 Q. And, according to what you just got through telling us, you also had to have a probate of the estate. A. Well, we didn't—

Mr. Marcus: That doesn't necessarily follow. I think your Honor can take judicial notice that you can have a public administrator appointed.

Mr. Jaureguy: No he can't; not in this state he can't take judicial notice of that. He might where you come from. A. I might tell you, Mr. Jaureguy, had Dr. Straumfjord shown any indication to cooperate with his patient, this poor widow on relief, and hounding her for money—

Q. Where do you get the information he was hounding her for money? A. Just from the information here, three or four bills here.

Q. Oh, three bills in three or four years was "hounding her for money"? A. I think you will find Dr. Straumfjord was thinking more of himself than he was the widow.

Q. And you had that in mind when you wrote the widow? A. No. We wanted to know what he did.

Q. Then you didn't have in mind that you would require this widow who was on relief to have a probate of her husband's estate? A. Not necessarily.

Q. What do you mean "necessarily," Mr. Bechtold? I am asking you whether you did or didn't. A. If
560 we could have gotten an itemized statement from the doctor, as he should have—

Q. You would have paid the widow? A. Probably would have paid the widow or sent a check to the doctor.

Q. Then, if that is true, then why shortly thereafter did you write the attorney and give as the only reason for not paying it that you first had to have a probate of the estate? A. Have you got that letter?

Q. No. You have it right in your hand. A. Is it here? Well, we probably did that to start with, and then this fellow was such a nice fellow that he said, well, here, let's settle the claim and forget it.

Q. That is it? A. Didn't we do that?

Q. In other words, the determining factor in a case of this kind is whether the attorney is a nice fellow, is that it? A. Not necessarily. Sometimes it helps.

Q. It helps. Well, now, you tell your patients about the doctors you would like to have them call on. Do you tell them about the attorneys, that they are nice fellows, that will help them out—

Mr. Marcus: I object to that kind of question. We are getting pretty far afield, your Honor.

Mr. Jaureguy:

561 Q. I want you to continue reading until you familiarize yourself with— A. I want to see this letter. It's been some time. I think, your Honor, I think this is most of the file.

The Court: I can't hear you.

A. I believe this is most of the remainder of the file.

Mr. Jaureguy:

Q. While we are on that subject, in your office these documents I have just handed you—Pardon me—Ex-

hibit 1876, in your office those were right along with the other documents that you have already seen, the photostatic copies of the other documents, were they not? A. Well, I thought they should have been.

Q. That is where you keep your files? A. Yes. I can't see why they weren't.

Q. Are you sure they weren't? A. Beg pardon?

Q. Are you sure they weren't? A. I don't know. I didn't take them out. I don't know why they shouldn't have been.

Q. That is right. I am not saying they weren't; I am saying they were. A. They were and probably are still there and the FBI maybe overlooked them. They didn't overlook very much, though.

Q. No, no. You don't think so, eh? A. No, I don't think they did.

Q. They overlooked a lot in this case, didn't they; they overlooked most of the file in this case, didn't they? A. I am free to admit that that wasn't all the file there. I am very proud of this; I didn't want this overlooked.

562

Q. You are proud of this case? A. Proud of that file.

Q. Proud of the file? A. And I think you will find we paid that bill according to the contract, and the doctor charged $334 for taking care of a man who had a stroke and nothing was done for him, as I recall the case.

Q. Nothing at all? A. Except to look at the chart, and it was one of those cases where some of the organizations pay on an annual fee. I believe the one organization would have paid $100 or $120 for that case, and the doctor charged $334 of a poor widow who was on relief.

Q. Yes. A. That has always kind of disturbed me.

Q. And the five months' services—the man was in the hospital five months before he died—and you think Dr. Straumfjord, all he did was go up and look at the chart once in a while? A. I think the chart would show that.

Q. It would? A. Nothing else he could do.

Q. Now, this letter you wrote to the attorney in December, 1947,—no, I beg your pardon. First, you wrote to the doctor. A. Yes, I wrote the doctor several times for a statement and he wouldn't send it.

563

Q. You wrote to the doctor four or five months—you wrote to the doctor for a statement? A. Yes.

Q. You get your file out, Mr. Bechtold, and produce a copy of that letter; will you do that? A. I will try it.

Q. All right. Anyway, you wrote Dr. Straumfjord in

December, "Regarding your account with" —this named man— "referred to in your letter of several weeks ago, it pleases me to learn of your interest on behalf of"—this man's— "widow. But, since" —the man— "is deceased, I would suggest that your claim be presented to the administrator of his estate." A. Would you read his letter to that? I think that would be a very interesting letter.

Q. If I can find it, I will. Yes. He wrote November 17 and you answered December 11th, yes. A. If I recall, he wrote a letter with tears in his eyes for the poor widow.

Q. "Mrs. Olsen has brought to me a letter from you regarding her husband dated July 31, 1947, stating that you had refused to pay our bill dating back to 1944 because you did not have adequate information from me as to what the services were for; however, check-up with the hospital reveals that you have accepted the hospital
564 bill and in so doing must be completely aware of what the condition was for which he was treated. Accordingly, your letter to Mrs. Olsen is one of your customary stalls in paying physicians' bills.

"Mrs. Olsen is a poor old lady, a widow"—of course, you knew that already? A. I didn't at the time.

Q. You knew she was on relief? A. I think probably by that time I did.

Q. "Mrs. Olsen is a poor old lady, a widow, and does not understand your chicanery. We feel, accordingly, that we cannot press her for payment of bills which you know are legitimately yours. I am therefore telling you against my principles that this man, as you know already, suffered from hemiplegia."—I don't guarantee the pronunciation—"Perhaps that knowledge will absolve you from your sins." A. Well, now read my letter, will you?

Q. Yes. Your letter, "Dear Dr. Straumfjord" —No. I have read your letter. Should I read it again? A. Read all of it.

Q. "Dear Dr. Straumfjord: Regarding your account with"—the man—"referred to in your letter of several weeks ago, it pleases me to learn of your interest on behalf of"—the man's—"widow. But, since"—the man—"is deceased I would suggest that your claim be presented to the administrator of his estate."
565 Why didn't you tell the doctor then in this letter that—this is the first time you suggested that it be presented to the administrator. Up to this time you had said, "We won't pay it until we get an itemized account." A. That is right.

Q. But when Dr. Straumfjord called your attention to the fact that you had that information from the doctor's report—from the hospital records—you give a different reason—administrator of the estate. A. And he refused to present it to us, and if he would present it to the estate that would be a way out. You didn't finish my letter, Mr. Jaureguy.

Q. Then in January, January 3, 1948—and, since you have already said it was a nice attorney, I will say it is Mr. Charles W. Halderman of Astoria—you said, among other things, "The contract undertakes payments for necessary medical and hospital services under the provisions stipulated, but it makes no provision for payment of moneys or other benefits to a deceased's relatives or heirs. The payments may be made to the members or to their attending doctors or hospitals, but they are generally made direct as protection to the doctors in hospitals in their collections. This explains why payment was made to the hospital in this case. However, if a member has paid his accounts, he is reimbursed in the amount to which he is entitled under the contract, but if the member
566 is deceased and his account has been paid, reimbursement, of course, is made to the estate."

"National Hospital Association

"ATwater 5291 "732 S. W. Third Avenue
Portland 4, Oregon U. S. A.

January 3, 1948

"Mr. Charles W. Halderman
Attorney at Law
536 Commercial Street
Astoria, Oregon

"Re: Mr. Hans Olsen, deceased
Employe of Clatsop County Court

"Dear Mr. Halderman:

"We have for acknowledgment your letter regarding the doctor bill of Hans Olsen, deceased.

"In reply, we are sorry that Mrs. Olsen should have been troubled in this matter, but she apparently has a misunderstanding of the contract under which her husband was covered. The contract undertakes payments for necessary medical and hospital services under the provisions

stipulated, but it makes no provision for payment of moneys or other benefits to a deceased's relatives or heirs. The payments may be made to the members or to their attending doctors or hospitals, but they are generally made direct as protection to the doctors and hospitals in their collections. This explains why payment was made
567 to the hospital in this case. However, if a member has paid his accounts, he is reimbursed in the amount to which he is entitled under the contract, but if the member is deceased and his account has been paid, reimbursement, of course, is made to the estate. In all cases it is necessary, for purposes of audit, that the Association be in receipt of properly itemized statements showing the condition treated and the services that were furnished.

"In the case in question, it seems that Mr. Olsen's doctor does not accept payment from insurance companies and for some reason, which is not explained, the doctor failed to furnish itemization of his services, notwithstanding he had several times been requested to do so. However, with receipt of the doctor's statement enclosed with your letter, we have been able to audit the claim which, based on the schedule in use at that time, is $203.00. Our problem is to know to whom to make payment since you advise that the estate will not be probated, and we shall appreciate your advising us.

"Yours very truly,

National Hospital Association
/sd/ C. C. Bechtold
General Manager

"CCB B

"cc County Court of Clatsop"

568 A. Would you read Attorney Halderman's letter, too?

Q. That is a pretty long letter, but I will read it, certainly. "December 18, 1947,—

The Court: You don't need to read it. I will read it.

Mr. Jaureguy: Very well, your Honor.

Q. Then, at a time—at a later time you suggested to Attorney Halderman that you send him two checks so he could give one to the widow and one to the doctor, that you split up this $200? A. Yes. I wanted to do something for the widow since she was on relief. I thought it would be only fair—he seemed to be so interested in this widow—that it would be only fair if he made a little contribution himself.

Q. So you said, "In accepting this manner of paying the claim, and with your offer to donate your services in making the collection, it occurs to us that Dr. Straumfjord probably would also like to help Mrs. Olsen by letting her keep a part of the payment for her personal use. If this will be agreeable to Dr. Straumfjord, I should like to suggest that the payment be made in two checks drawn to you, one in whatever amount the doctor wishes to help Mrs. Olsen, the other for the doctor, and which you can endorse over to them. We will await your advising us, if this meets your approval."

569 "National Hospital Association

"ATwater 5291 "723 S. W. Third Avenue
Portland 4, Oregon U. S. A.
January 12, 1948

"Mr. Charles W. Halderman
Attorney at Law
536 Commercial Street
Astoria, Oregon

"Dear Mr. Halderman:

"In answer to your letter of January 5, we shall be pleased to cooperate with you in your efforts to help Mrs. Olsen, and it will be agreeable with us to pay her deceased husband's doctor account in the manner you suggest if it can be satisfactorily shown that there are no other claims for medical or hospital expenses, and that the burial expenses have been paid.

"But in accepting this manner of paying the claim, and with your offer to donate your services in making the collection, it occurs to us that Dr. Straumfjord probably would also like to help Mrs. Olsen by letting her keep a part of the payment for her personal use. If this will be agreeable to Dr. Straumfjord, I should like to suggest that the payment be made in two checks drawn to you, one in whatever amount the doctor wishes to help Mrs. Olsen, the other for the doctor, and which you can endorse over to them. We will await your advising us, if this meets your approval.

"Yours very truly,

National Hospital Association
/sd/ C. C. Bechtold
570 General Manager

"CCB:pk
"cc Clatsop County Court"

Q. (Continuing) What you have just said is the only thing you had in the back of your head? A. Mr. Halderman, he said he wasn't going to charge anything for his services—

Q. No, he didn't say that. A. I think he did.

The Court: We will take the morning recess.

(Short recess.)

571 Q. Now, I hand you Exhibit 1390. That is a case where a doctor wrote you and objected to your putting his name out in literature that you sent out, as being connected with the National Hospital Association.

You answered on August 3, 1938, and there are three paragraphs here. I will read the second paragraph:

"In reply, the National Hospital Association is not concerned in any association but its own. However, it has no intention of representing that you or any other doctor has any connection with or is working for the Association, and you may be assured we shall not intentionally use your name in any such representation. If you should learn anything to the contrary, we shall appreciate your calling it to our attention."

I want to read the third paragraph, also. You make three statements here. I am reading this for the purpose of asking you what these three statements represent—whether these three statements represent the definite policy of the National Hospital Association.

"For your information, it is the position of the National Hospital Association that the doctor who attends a patient is working for the patient and not for the Association."

Is that the definite stand of the National Hospital Association? A. Yes.

572 Q. "But if that patient chooses to be a member of the National Hospital Association and through this relation is enabled to meet his doctor bills, that is a matter between the patient and the Association."

Is that the definite stand of the National Hospital Association? A. Yes.

Q. "And if the Association chooses to state to the member what doctors are acceptable to the Association, that likewise is a matter between the member and the Association."

Is that the definite stand of the National Hospital Association? A. What is the date of that letter?

Q. August 3, 1938. A. Yes, I presume at that time.

Q. Is it your position now? A. I believe, if we would care to exercise that right, we have the right to do so.

Q. Will you read the last three lines, starting after the semicolon and tell us in what respect that should be changed in order to set forth the present policy and position of the National Hospital Association?

Mr. Marcus: I object to that, if your Honor please, on the ground of irrelevance as to the present policy of the Association. I would like to move to strike out all the testimony with respect to specific cases, your Honor,
573 also on the ground of irrelevance.

The Court: The objection is overruled. The motion is denied.

A. Did you wish me to read this aloud?

Mr. Jaureguy:

Q. No, just to yourself. It is in the record. Tell us in what respect it should be changed now to state the policy and position of the National Hospital Association? A. Well, this hardly is applicable. The policy of the Association is as I have several times stated, to permit the member to select his doctor. That is our policy, and that is our practice. Does that answer your question?

Q. I don't know. I just want to know in what respect the statement made in that letter should be changed in order to state the practice and policies of the Association. A. 1938?

Q. No, I am speaking of the present practice and policy. In what way should that last statement be changed, if at all? A. Could be changed?

Q. In what respect, if at all, should the last statement in that letter be amended so as to state the present policy and position and stand of the National Hospital Association? A. Shall we go back and get the thought in mind?

Q. You get the thought in your own mind. A. I say here, "It is the position of the National Hospital
574 Association that the doctor who attends a patient is working for the patient and not for the Association." That is correct.

"But if that patient chooses to be a member of the National Hospital Association and through that relation is enabled to meet his doctor bills, that is a matter between the patient and the Association." That is correct.

"And if the Association chooses to state to the member what doctors are acceptable to the Association, that likewise is a matter between the member and the Association."

Now your question is what?

Q. Well, I will broaden it now. Should any of these three statements here mentioned be changed in order to state the present policy and position and stand of the National Hospital Association? A. I wouldn't want to change any of them.

Q. You say the policy of the Association is to give members a free choice of physicians? A. That is right.

Q. How long has that been the policy of the Association? A. Well, the other day I told you it is a matter of evolution that has been coming on for a number of years. Just the length of time that has been in full effect I wouldn't know.

Q. As much as fifteen years, you think? A. I don't think that long, not in full effect, no.

Q. Ten years? A. Yes.

575 (Exhibit 1390 referred to above is as follows:)

"August 3, 1938

"Mr. Irvin H. Fox
Eugene, Oregon

"Dear Doctor:

"We are in receipt of your letter of July 27th requesting us to discontinue placing your name on any letters or cards or in any way that would lead one to believe that you were connected with any hospital association or working for them.

"In reply, the National Hospital Association is not concerned in any association but its own. However, it has no intention of representing that you or any other doctor has any connection with or is working for the Association, and you may be assured we shall not intentionally use your name in any such representation. If you should learn anything to the contrary, we shall appreciate your calling it to our attention.

"For your information, it is the position of the National Hospital Association that the doctor who attends a patient is working for the patient and not for the Association; but if that patient chooses to be a member of the National Hospital Association and through this relation is enabled to meet his doctor bills, that is a matter between the patient

and the Association; and if the Association chooses
576 to state to the member what doctors are acceptable to the Association, that likewise is a matter between the member and the Association.

"Yours very truly,

National Hospital Association
C. C. Bechtold
General Manager

"CCB:s
(In handwriting: "cc-Dr. Dale.")"

Mr. Jaureguy:

Q. I would like to show you Exhibit 1451; that is, the hospital ticket attached to it, which has been filled out, showing that it was effective in August, 1947, and I would like to have you read Paragraphs 2 and 3 headed "Information for Employee," and ask you, after reading that, whether you have had that policy in effect? A. Paragraphs 2 and 3?

Q. Whether you had that policy in effect for as long as ten years? A. You want to know if we have had this policy in effect for ten years?

Q. That ticket was filled out in 1947. Those two provisions say employees shall go to doctors designated by the Association, don't they? A. Yes.

577 Q. After reading that on the ticket, that was filled out in 1947, do you still say it is the policy of the Association to permit members to have a physician of their own choice? A. Yes.

Q. Why do have to say that on the ticket, then? A. The Association permits members to go to any doctor they choose, and it has designated all doctors to render the service.

Q. Paragraph 2 says: "When sick or injured present this ticket to the National Hospital Association at its offices in Portland, Oregon, or to any doctor designated by the Association."

Paragraph 3 reads: "You may obtain services in any district in which the Association operates and you may select any doctor designated by the Association but, except as provided in Paragraph 4 hereof, the Association will not be responsible for any bills you contract other than provided for in the contract." You still say that is the

information you give to employees, "Information for Employee," and you still say that a patient may choose any doctor he wishes? A. Yes. The facts speak for themselves, Mr. Jaureguy.

Q. Have you sent out some printed information to the employees telling them that they must not take those two paragraphs seriously, but that they can take anybody they want to? A. No special information sent out to the employees. The contract is on file in the employer's offices, and it is available to the employees to read at any time.

There is nothing hidden in any place. I might ex-
578 plain that provision here. We have preserved that provision and I might explain why we have preserved that provision.

Q. I wish you would, yes. A. There are times, Mr. Jaureguy, when we thought it might be policy to return to the system of—having something to say as to what doctors shall render services, the reason being that our experience has shown us that many doctors will attempt work which they are not trained to perform, and it has been the policy of the National Hospital Association to wish its member to fall into the hands of doctors who are qualified.

Therefore, we reserve that right to designate the doctors, although it has not been done for a number of years.

Q. Then you must have a list in your office which rates doctors in the State of Oregon, those that are good and those that are no good, is that correct? A. Have a pretty good list of doctors who are no good.

Q. Who got up that list? Did you do it or Mr. Page? A. No, I don't think there is any special list, but just a matter of years of experience. We have found out the doctors who are capable of doing certain work and those who are not, and we also know what doctors who pose as being—not "pose," but men who specialize in different classes of work, and it is to our advantage and the advantage of the patient to encourage service by men who

are qualified and we naturally, from long experience,
579 know those men.

Q. You know them? A. Very well.

Q. How did you get the information? A. Many years' experience with these men, Mr. Jaureguy.

Q. Here is an exhibit I was going to show you before. I will show it to you now. It is 1875 for Identification, where a doctor asks you for permission to do some work and you gave him the permission.

Just tell us how long after he asked for permission you gave him the permission. A. This is our friend Dr. Straumfjord?

Q. Yes. A. Well, it was quite a time here, I notice.

Q. What is that? A. Quite a long time.

Q. From May 18th? A. May 28th to July 13th; too long.

Q. Pretty long, wasn't it? A. Yes.

Q. You usually do not take over a month, do you? A. Oh, sometimes it would be two days, sometimes might be a month, but not very often; we try not to.

Q. Is it very often it is as much as six weeks, like it was here? A. No, Mr. Jaureguy. We have many
580 thousands of claims presented, and I think that is one where there was some delay.

Q. Some delay in authorizing a doctor to make a gastrointestinal examination? A. Yes.

Q. This was before the boycott, too, wasn't it? This was in 1937? A. Yes, I think so.

Q. Was the boycott— A. That is regrettable.

Q. The boycott did not have anything to do with the seven weeks' delay in giving authorization there? A. No. That is regrettable. Those things would happen, but I don't think they should enter into it.

Q. No? A. Because we were not telling the doctor he couldn't go ahead and examine his patient.

Q. I beg your pardon? A. We were not telling the doctor he could not examine his patient.

Q. Do you remember a couple of years ago there was a lawsuit down in Astoria where Dr. Parcher was suing a patient for a fee? A. Yes, there was.

Q. What, if anything, did you have to do with the instigation of that lawsuit?

581 Mr. Marcus: I object to that, your Honor. Again, we are going utterly outside the scope of the case.

The Court: Overruled. Read the question.

(Question read.)

A. I don't recall I had anything to do with the instigation of that.

Mr. Jaureguy:

Q. You consulted with union members as to whether or not they should fix a case so that their member would be sued? A. I don't think so, no. As I recall that case,

the bill was sent to the doctor—the check was sent to the doctor and the doctor refused to accept it and—

Q. Then you talked to the union man on the telephone? A. Yes, I talked to Mr. Hainey of the union, that is right on it.

Q. Did you have something to do with picking an attorney for the union member? A. I think they asked me for advice on that. I think I did.

Q. Then, about the time the lawsuit was brought, you went down and talked to the union, didn't you? A. No, I did not.

Q. You did not? A. No.

Q. Then did you advise them by telephone, when they called you up again, to write their complaints back to Washington, D. C.? A. No, I didn't do that.

582 Q. What did you tell them? A. Mr. Jaureguy, I don't know what transpired there. I remember I did talk to Mr. Hainey of the union.

Q. You picked out an attorney for them? A. No, I didn't pick out an attorney. They advised on that. They did. That is right.

Q. In addition to having this National Hospital Association, you are an attorney-at-law? A. Yes, I am a member of the Bar.

Q. Practicing your profession? A. No, I am not.

Q. How long since you practiced law? A. I didn't practice very long, Mr. Jaureguy.

Q. Well, it is a fact that, up to the last telephone directory, you had your name listed in the classified directory as an attorney? A. I didn't know it was there. I think it is still there, maybe. I know I am a member of the Bar.

Q. If it is in the classified directory, you have clients coming to your office? A. No, I don't.

Q. Never had a client notice your name in the classified directory and come to your office? A. As a matter of fact, I didn't know it was there. I think probably I

583 am paying for it, and I didn't know about it.

Q. How long since you have had a man consult you professionally, as a lawyer? A. Well, as an attorney I think it has been many, many years. I have had people ask me my advice on things, and I have referred them to other attorneys.

Q. And do you get a cut in fees as you do with the doctors? A. I get no fee.

Q. You don't get a cut when you send them to a lawyer? A. Not a cent. I am very pleased to have you ask that question.

Q. I told you the other day I was going to talk about this. A. I have no arrangement with any attorneys and get nothing from any attorneys or from any doctors. There is no cut.

Q. I won't go into what you get from the doctor services. You don't get anything from lawyer services, directly or indirectly? A. Not a cent; not one cent. If you know Colonel Clark—he is our attorney—I don't think he would stand for that in the first place.

Q. Did you pay the attorney's fees in that Parcher case for the defendant? A. I don't remember whether we did or not.

Mr. Jaureguy: That will be all.

584 Redirect Examination

By Mr. Marcus:

Q. Mr. Bechtold, would you say that you would have many members in your Association if the Association did not pay its bills promptly?

Mr. Jaureguy: I object to that as calling for a conclusion.

The Court: Answer.

The Witness: Mr. Marcus, I didn't get the question.

Mr. Marcus:

Q. The question is, would the Association have many members if the medical bills were not paid promptly by the Association.

Mr. Jaureguy: I want to object on the further ground that there is no evidence that they do pay them promptly.

The Court: Answer.

A. The National Hospital Association's policy is to pay its bills very promptly. We feel we are good enough business people to realize that if you don't pay your bills promptly you can't hold the respect of your members or of the general public.

The Court: How many members do you have now? A. Between forty and fifty thousand, I think, your Honor.

The Court: What was your peak? A. I imagine about 50,000 would be our peak. It varies with the seasons. In the summertime when canneries are operating it is always heavier.

The Court: How many in Oregon? A. Four-
585 fifths, I think, probably.
The Court: That is close enough.

Mr. Marcus:

Q. Mr. Bechtold, to your knowledge has the Association during the last ten years ever refused to pay a medical bill because of the particular doctor the member went to?
Mr. Jaureguy: I object to that as a leading question.
The Court: Answer.

A. It has not.

Mr. Marcus:

Q. Now, Mr. Bechtold, you were asked the other day about the profits of the Association and your own salary. Could you tell us whether during the period covered by the complaint the Association has ever suffered any losses.
A. Yes, we have suffered some losses. I think as late as 1940 or '41 we suffered quite a heavy loss. Prior to that our tragic loss was in 1917 and '18—wait a minute—1918 and '19, I think, was when the influenza epidemic struck this section.

The Court: How is one of these Associations able to hold up in a period like '31 or '32, at the bottom of the depression?

A. Well, surprising as it may be, Your Honor, the public seems to feel the need for this protection at a time like that.

The Court: Yes, but they don't have any money. The working people don't have jobs and they don't have any money.

A. Revenue naturally goes down, and we naturally do have difficulty continuing. And in 1918 and '19 when the influenza struck us.—

586 The Court: You lost there in the outlay. I am thinking of your intake in the depression period.

A. Our intake naturally goes down.

The Court: What actuarial basis, if any, do you use to compute your charges to your members?

A. We have a rather comprehensive accounting department. We know at the end of each fiscal year what our medical costs have been, what our doctors and hospital costs have been, the various other department costs, and on that we have been able to base our premiums.

The Court: But your charges really are not on an insurance basis, are they? They are on a basis of what you can get and other factors, like the sale of any other commodity?

A. We only have one price and one fee in our industrial contracts, a uniform fee of $3.50 a member. In the family and individual contracts the fees vary with the class of contracts. We have three contracts, Standard, Special and Superior. The benefits of those contracts are—

The Court: I am not much concerned, but you didn't really answer what I asked you. I asked you what your rates are based on.

A. Our rates are based on our experience.

(A file of correspondence containing five letters pertaining to Mrs. Canna Walker, Yreka, California, was thereupon marked PLAINTIFF'S EXHIBIT No. 1877 for identification)

587

The Court: While you are looking at those papers, did you have something to do with getting through the hospital law here in Oregon?

A. Your Honor, I did. All the laws that have been passed in Oregon relating to the hospital association business, I believe, were sponsored by the National Hospital Association. First, in 1917 it was drawn by Attorney Harrison Allen, who is since deceased. I collaborated with him in drawing that law. And as you probably know, it was the first and only law in all the states that recognized this class of business until about 1938, I believe. In 1937—no, in 1919 there was such a protest against this class of coverage from the working people because of the abuses that existed at that time, that we thought it advisable to get some legislation to correct the abuses. And in the session we introduced—we had introduced a bill whose aim was to remove those abuses, and that bill was enacted and remained on the statutes until 1941.

The Court: When did you personally enter this field?

A. 1910.

The Court: 1907?

A. 1910.

The Court: There was some talk here about your institution, I believe it was, having been started in 1906.

A. The history goes back to 1906, as I related.

588 The Court: Who was the founder?

A. Dr. Holt C. Wilson, I think, could be given credit of being the founder. And the American Medical Association in their survey in 1946 of the various plans for prepaid medical and hospital care in the United States, by Mr. Simpson of Northwestern University, gives the National credit of being the oldest of its kind in America. He also mentions the Eugene Clinic—not the Eugene Clinic—yes, I think so; Mr. Kuykendall, who probably as an individual doctor had preceded us. But beyond that I believe we are given the credit of being the founders of this plan of insurance in the United States.

Mr. Marcus:

Q. Mr. Bechtold, did the Association at one time have a group contract with Fluhrer's Bakery at Medford? A. Yes.

Q. Did that contract cover its branches in Yreka and Mt. Shasta, Washington? A. California.

Q. Or California. Did it? Is your answer Yes? A. Yes. And may I suggest, don't you dare put Crater Lake in California.

Q. I will try not to.

(A file of five letters between National Hospital Association and Fluhrer's Bakery was thereupon marked Plaintiff's Exhibit No. 1878 for indentification; letter
589 August 25, 1944, in re Fluhrer's Bakery Company, and carbon copy of letter dated August 30, 1944, in re Fluhrer's Bakery were thereupon marked Plaintiff's Exhibit 1879 for identification; copy of letter dated November 27, 1944, Fluhrer's Bakeries to National Hospital Association was thereupon marked Plaintiff's Exhibit No. 1880 for identification.)

Mr. Marcus:

Q. I show you an exhibit marked for identification 1877 and ask you whether those are documents taken from the files of the association and used and kept there in the regular course of its business? A. Yes.

Q. Was that account lost because of the boycott of doctors in the Medford area?

Mr. Jaureguy: I object to that as calling for a conclusion of the witness.

The Court: Answer.

A. Yes.

Mr. Marcus:

Q. I show you Exhibits marked for identification 1878, 1879 and 1880 and ask whether they are documents taken from the files of the National Hospital Association and kept and used there in the regular course of its business. A. Yes.

Q. Mr. Bechtold, Friday Mr. Jaureguy asked you
590 some questions with respect to drugs and medicines. Now, first, I would like to ask you what is the general term used with respect to your contracts with the State Industrial Commission? A. Medical aid contracts.

Q. Now, does the National Hospital Association send out first aid supplies and drugs to accounts outside of the state who are not medical aid accounts? A. Yes, first aid supplies and equipment.

Q. Mr. Bechtold, I show you Exhibit—

The Court: Unless it involves going into too much, does the State Industrial Accident Commission subcontract certain areas to you?

A. Under the compensation laws, as you recall, the State Commission has authority to provide the service themselves, or they may authorize the employer to furnish it, or they may contract for it. They have followed the practice—

The Court: Or they can just leave it to all the doctors?

A. Well, they call that—the term has been used "in the open." The law says that the State Industrial Accident Commission shall have authority to furnish—

The Court: Yes, but what do they do? Do they contract certain areas to you? A. Certain contracts they do.

The Court: You mean certain industrial contracts?

591 A. That is right.

The Court: In other words, instead of leaving those contracts open to all the men in the profession they turn them over to you; is that it?

A. Well, that was the practice in the past. That has been—that is, rather, in the past. There is a very few of those

contracts in effect at this time. However, we do have a few remaining in Oregon, and where they are in existence the members enjoy the same privilege they would under the State. They go to any doctor they wish to select. We also have a few contracts where the employer has rejected the Workmen's Compensation Law, and they are under private insurance.

The Court: All right. I was going to ask you that next. Take like Lloyd's contracts that we try here all the time, where they agree to provide the same service that the Association provides, do they turn that over to you, people like Lloyd's?

A. No, in those cases we contract with the employer.

The Court: I know, but you would have to have the insurer—the insurer would have to be a party to it, wouldn't it?

A. I don't believe the contract so states. I think the contract is made with the employer, and in that case the employer's rates—he benefits by his rate from the carrier.

The Court: There are many, many employers who reject the compensation in Oregon, and they insure with Lloyd's and other people, and Lloyd's and other people agree with the employer. We try a great many cases
592 under those contracts, and they agree with the employer that they will do the same thing for the working man in the event of injury that the State Industrial Accident Commission would do. Do those insurers turn their obligations over to you?

A. Not as insurers. That again would be through the employer. I don't know of any instance where we have a contract with the insurance company itself.

The Court: All right.

Mr. Marcus:

Q. Mr. Bechtold, I show you Exhibit 1370 and I call your attention to the reference in that exhibit to Mr. Burbin. Can you tell us to whom that reference is supposed to refer? A. Mr. Marcus, I didn't get your question.

Q. Well, my question is, do you know a Mr. Burbin, after reading that document? A. Mr. Bervin. This is misspelled here.

Q. That is what I was trying to develop. A. (Spelling) B-e-r-v-i-n, it should be.

Q. Mr. Bervin was one of the members of your staff, was he not? A. He is one of our field representatives.

Q. Now, Mr. Bechtold, I am reading one sentence from a statement which appeared in the Medical Reporter in April of 1935. The statement is this: "A common feature of contract and panel practice is the insistence of controling bodies that only the cheapest drugs, dressings,
593 and therapeutic measures be employed." Is that true of your organization?

Mr. Jaureguy: I object to that as a leading question.

The Court: He may answer.

A. It definitely is not true. To the contrary, we believe it is economy for us not only to see that the members are furnished with the best of medications, but that also applies to the men who treat them.

Mr. Marcus:

Q. Now, the name of Dr. Suckow has appeared both in the exhibits and at the trial. Can you tell us when he was connected with the Association, and when, if at all, he severed that connection? A. I don't remember the period. He discontinued his services with the Association at the outbreak of the recent war. He had been with the Association probably five or six years prior to that time.

Mr. Marcus: That is all.

Mr. Jaureguy: That is all.

(Witness Excused.)

Mr. Marcus: Now, I suggest, your Honor, that for the intervening period we might take up with a matter of time schedules.

The Court: Yes. He wants to know, one, whether this case will still be going on in December; two, and if it is, whether he can get away one or two weeks in Decem-
594 ber.

Mr. Marcus: Your Honor, may I make this statement?

The Court: Yes. —to go back to New York on another case.

Mr. Marcus: Subject to one reservation, I think we will be able to put our case in within another ten court days. That reservation is, if as a result of objections made by the defendant to some of the exhibits, those exhibits are re-

jected, we may want to put on one or two witnesses to prove what those exhibits were offered to prove; but as far as I am concerned, I don't know what Mr. Jaureguy's plans are with respect to putting on his case, but I would like to be able to have either the first week in December or the second week in December to take care of this New York matter.

Mr. Jaureguy: Well, I really would like a little time between the time they finish their case and we start ours. As I understand it, when they finish their case, your Honor is going to rule on the admissibility of their documents, and I understand they are going to file some kind of a statement and we are going to file definite objections, which might take some little time if we have to go over all these documents again, and then that will determine to a certain extent as to the witnesses we are going to call. So, for those reasons and others, I would like some time after they finish their case and we start ours. Of course, it is perfectly satisfactory as far as we are concerned for counsel to go East
595 and take care of his other cases. That part we have no objection to whatever. We understand the situation.

The Court: I will tell you what I will do, Gentlemen, to show you how agreeable I am this morning. You arrange that time business between yourselves and I will agree. I can always find plenty to do when you are not here.

Mr. Jaureguy: Will it be satisfactory with your Honor, then, if we agree among ourselves at the conclusion of their case we take an adjournment until he comes back from the East?

The Court: Any agreement you want to make. I won't be here the week beginning November the 13th. Recess until 2:00 o'clock.

(Noon recess.)

596 Court reconvened at 2:00 o'clock P. M. October 25, 1949.

Mr. Marcus: Your Honor, I believe Mr. Jaureguy was to produce a transcript of the disciplinary proceedings regarding Dr. Tharaldsen. I would like to ask for that now.

Mr. Jaureguy: I have here two transcripts, your Honor. They are all under one cover. I mean, each of the transcripts is under one cover and each of the transcripts refers to the doctor mentioned and also to two other doctors. I did not try to separate them, so I am handing him these transcripts.

Mr. Marcus: It is my understanding, your Honor, that over the course of a great many years the minutes of the House of Delegates of the State Society have appeared in printed form in Northwest Medicine. However, as to the 1948 minutes, that is not true. They do not appear in Northwest Medicine at all, and on several occasions we have asked the defendants, and Mr. Foley especially, regarding those minutes. Mr. Foley has stated on several occasions that it has been a matter of his getting up his notes or transcribing his notes. We would like to have those minutes available before we rest our case.

The Court: Will you see what you can do about that?

Mr. Jaureguy: I beg your Honor's pardon?

The Court: Will you see what you can about that?

Mr. Jaureguy: Yes, your Honor.

597 Mr. Marcus: This morning, your Honor, I forgot to formally offer these exhibits that have been marked for identification. That are No. 1877, 1878, 1879 and 1880. I would like to offer them in evidence.

The Court: They are admitted on the same premise as the earlier exhibits.

(Carbon copy of letter dated November 16, 1944, C. C. Bechtold, General Manager, National Hospital Association, to Charles Pius, M. D., Yreka, California, and attached correspondence, was thereupon received in evidence and marked Plaintiff's Exhibit No. 1877;

(Sheaf of correspondence, the first of which is a carbon copy of letter dated February 1, 1944, National Hospital Association to Mr. A. W. Cannon, Manager, Fluhrer's Bakery, Medford, Oregon, was thereupon received in evidence and marked Plaintiff's Exhibit No. 1878;

(Letter dated August 25, 1944, Ralph Furrer, National Hospital Association, to C. C. Bechtold, National Hospital Association, Portland, Oregon, was thereupon received in evidence and marked Plaintiff's Exhibit No. 1879;

(Copy of letter dated Medford, Oregon, November 27, 1944, Fluhrer Bakeries, to National Hospital Asso-
598 ciation, was thereupon received in evidence and marked Plaintiff's Exhibit 1880.)

RALPH W. NELSON was thereupon produced as a witness on behalf of the Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Mr Nelson, are you connected with any hospital institution in the City of Portland? A. Yes, I am.

Q. What hospital? A. Portland Sanitarium and Hospital.

Q. What is your connection? A. I am administrator, superintendent.

Q. About how long have you had that connection? A. I have been there since 1917.

Q. Are you connected with the Northwest Hospital Service Plan? A. Yes, I am Secretary of the Board of Trustees.

Q. About how long have you been connected with that organization? A. Since it was organized. I do not remember the exact date.

Q. Mr. Nelson, calling your attention to the year 1944, did you have occasion to attend a meeting of a group of doctors and a group of hospital representatives at St. Vincent's Hospital? A. Yes. I can't say exactly the
599 date. I attended several such meetings.

Q. But to your recollection, around the year 1944? A. I would say it was, yes.

Q. What was the occasion for that meeting? A. We had a number of meetings. I call it the Blue Cross—the Northwest Hospital Service Plan was seeking to find a basis of operation in cooperation with the Oregon Physicians Service or the Multnomah Medical Service Bureau—I am not certain when the Multnomah Medical Service Bureau discontinued and became the Oregon Physicians' Service, but during the early development of the Northwest Hospital Service Plan we had hoped that we could have one sales force, a joint operation to some extent, and we were seeking to establish a basis or a formula for cooperative effort in the selling of the contracts of the Northwest Hospital Service Plan and those of the Oregon Physicians' Service. That was the primary purpose of the meetings referred to.

Q. Who were present at that meeting? A. I don't know if I could name everyone present. There were, I would say, nearly all the superintendents of the hospitals here in the city, and there was a group of doctors.

I remember particularly Dr. Richard Adams, Dr. Blosser, Dr. Gordon Leitch, and I think Dr. Gambee—that is, Ed Gambee—was present. There might have been others. I don't remember.

600 Q. What about Dr. Besson? A. Besson?

Q. Yes. A. I can't remember for certain. He was present at some of those meetings.

Q. What occurred at that meeting? A. We discussed at considerable length the question before us; that is, of trying to find a plan for that joint operation. It was mainly a discussion of how the premium dollar should be divided between the two services because we anticipated all the time maintaining two separate corporations, two seperate corporations, one to sell hospital service and the other to sell medical service only, and to combine them under one joint policy. That was the plan.

We discussed that matter and our discussions rather broke down over disagreement, that we could not agree on the division of the premium dollar. That was the principal thing that occurred at the meetings.

Q What position did the doctors take? As far as the doctors were concerned, what did they urge? A. I am sorry. My hearing is somewhat impaired. I have a little difficulty hearing you.

Q. As far as the doctors were concerned, what did they urge at that time? What were they urging at that meeting?

A. There was a proposal that, in combining our ser-
601 vice with the hospitals, we not recognize any other tickets than those of this organization. That was one of the proposals that was made.

Q. Do you recall which particular doctor said that, or was that a general matter of discussion by the doctors present? A. Well,—

Mr. Jaureguy: He did not say that it was a doctor who made the proposal.

Mr. Marcus:

Q. Let me ask you: Did a doctor make that proposal? A. Yes.

Q. That is, one of the doctors present? A. Yes.

Q. Was that a subject of discussion at this meeting? A. Not a lengthy discussion. It was discussed, yes. The reactions of the hospitals were expressed.

Q. Do you remember which particular doctor raised this question? A. It was either Dr. Adams or Dr. Leitch. I am not certain.

Q. I show you this document and ask you to read the last paragraph on the first page and see whether or not that refreshes your recollection as to which doctor brought up that proposition?

Mr. Jaureguy: May I ask whom that was prepared by?

Mr. Marcus: I don't know.

602 Mr. Jaureguy: Was it prepared by your office?

Mr. Marcus: No.

Mr. Jaureguy: I don't think that is a proper way to refresh his memory.

The Court: What is it?

Mr. Marcus: It purports to be a memorandum of that meeting.

The Court: After Mr. Nelson is through with it, Marshal, take it over to Mr. Jaureguy.

A. You are referring to this paragraph?

Mr. Marcus: Yes.

Mr. Jaureguy: Before I look at it, if you can't tell me who prepared it, can you tell me where it came from?

Mr. Marcus: Yes. That was turned over to us by the National Hospital Association.

Mr. Jaureguy: The National Hospital Association?

Mr. Marcus: Yes.

Q. Does that refresh your memory? A. Yes.

Q. Who was that person? A. Dr. Leitch.

Q. After this meeting were subsequent meetings had between these groups? A. Yes.

Q. Did the hospitals acquiesce in the proposal by the doctors that they do not accept association tickets?

603 A. No, they did not.

Mr. Marcus: That is all.

Cross Examination

By Mr. Jaureguy:

Q. You don't know who prepared this memorandum? A. No. I had never seen the memorandum before; that is, the first time I saw it was about two days ago.

Q. Was anybody representing the National Hospital Association present at any of these meetings? A. No.

Q. Was anybody keeping the minutes of the meeting? A. No, I think not. This was an informal meeting. It was not a formal meeting of the Portland Council of Hospitals, and as far as I know no one kept minutes.

Q. On the Board of Trustees of the Blue Cross here are doctors, aren't there? A. Yes.

Q. Is Dr. Adams one of them? A. No.

Q. Do you know whether the doctors that were present, any of them, at these meetings were on the Board of Trustees of the Blue Cross? A. No, none of them were.

Q. You say nobody kept minutes, as you recall? A. No. I think I would recall because I was at that time
604 Secretary of the Northwest Hospital Service Plan.

Q. Would you have been the one to have kept the minutes, if they had been kept? A. If it were a meeting of the Northwest Hospital Service Executive Committee I would have been the one to have kept the minutes.

If it were a meeting of the Portland Council of Hospitals, I was chairman of that body, and it was not a meeting of that body, I know, because no minutes were kept.

Q. You are rather certain nobody was designated to keep the minutes? A. I am almost certain no one was.

Q. And you are certain nobody kept minutes? A. Yes.

Q. I think you have testified that you are Superintendent of the Portland Sanitarium and Hospital? A. That is right.

Q. Does the Portland Sanitarium and Hospital have occasion to have any dealings with the National or Industrial Hospital Associations or any other hospital associations? A. Yes.

Q. Tell us about your experience with them?

Mr. Marcus: Your Honor, that is outside the scope of the direct examination.

The Court: Well, let me hear a question or two.
605 Who is the Portland Sanitarium and Hospital?

Mr. Jaureguy: That is, I think, owned by the Seventh Day Adventist organization.

Q. Isn't that right? A. Yes.

The Court: Out here on the East Side?

Mr. Jaureguy: Yes. 60th and—

A. 60th and Belmont.

The Court: Dr. Holden was associated with that.

A. That is right.

Mr. Jaureguy:

Q. I asked you to just relate the experiences which you have had with hospital associations. A. They, from time

to time, have patients—patients come into the hospital and state that they are under insurance contracts of these various associations, and in those cases we send the bills to the associations. I think, as a usual procedure, we call up by telephone and confirm the statements of the patients and find out whether they are actually under coverage and, if they state they are, we send the bills to them.

Q. Have you ever had any difficulty collecting bills from any of them?

The Court: That will be your case, Mr. Jaureguy. That will be part of your direct case.

Mr. Jaureguy: I will wait and call him later then?

The Court: Yes.

606 Mr. Jaureguy: That is, when I start to put on my case, then I will call him?

The Court: Yes.

Mr. Jaureguy:

Q. But, as I understand, the hospitals, as far as you know, the hospitals of Portland have never refused to take tickets of these hospital associations? A. I don't know of any case that there—of any case where they have.

Q. At any rate, the Blue Cross or the Northwest Hospital Service Plan, nor the Portland Council of Hospitals has never adopted any rule on the subject? A. The Portland Council of Hospitals has never adopted a rule against taking their cases. The Blue Cross would certainly have no authority to. That would be clear outside the scope of their activities. The Blue Cross is simply a competitor of these organizations, in a sense. I mean, it is another insuring organization.

Mr. Jaureguy: That will be all. Thank you.

Redirect Examination

By Mr. Marcus:

Q. To the best of your knowledge, is this document I have shown you a record of what occurred at those meetings?

Mr. Jaureguy: I object to that on the ground that is not the way to elicit a witness' testimony.

The Court: This is a preliminary question.

607 Mr. Marcus: This is just preparatory to offering the document.

The Court: I am going to reject it when you offer it. Answer. Have you read all that through?

A. I have read it through.

The Court: You have read it through?

The Witness: I read it through day before yesterday.

The Court: He wants to know whether that records what happened there.

A. I have no recollection of two items appearing on, I think, the last page.

The Court: That is all you need to answer. Now, you want to offer it in evidence?

Mr. Marcus: I would like to specify those items.

The Court: He says it does, with the exception of two items.

Mr. Marcus: I would like to know what those items are.

The Court: I would like to do something else. You are going to offer it in evidence, aren't you?

Mr. Marcus: Yes, but I would like to have the record show which particular items he refers to.

The Court: You offer it in evidence first.

Mr. Marcus: Well, your Honor, I offer it in evidence subject to the witness designating the two items.

The Court: All right. It is rejected.

608 Mr. Marcus: I would like to have that marked for identification.

The Court: Yes.

(Memorandum entitled "Report on Meetings of Representatives of Multnomah County Medical Society and Oregon Physicians' Service with Portland Council of Hospitals Held on January 31 and February 3, 1944," was thereupon marked Plaintiff's Exhibit No. 1881 for identification.)

The Court: You may make an offer of proof, if you want to, as to what he would testify to if permitted to do so, about what the two items are. Do you know what they are?

Mr. Marcus: I do not, your Honor.

The Court: As long as I am keeping it out, it is not necessary for him to tell what the two items are in the memorandum. I am keeping it out altogether.

Mr. Marcus: Yes, but your Honor has already indicated—

The Court: You take him down and talk to him and then put him back on the witness stand and have him tell what he knows. I am rejecting it. I am rejecting the document.

Mr. Marcus: Well, your Honor, in making the offer of proof I would like to be able to eliminate the items.

The Court: You just said you did not have any information as to what they are.

Mr. Marcus: That is what I want to elicit from
609 the witness.

The Court: Not here, no.

Mr. Marcus: May I make the offer during recess?

The Court: That is right.

Mr. Marcus: All right.

The Court: Or at any time after you have talked with him.

Mr. Jaureguy: I have no objection to Counsel making his offer during the recess, on these rejected items, as long as he does not ask the Reporter to copy into the record the entire document that is rejected. Otherwise I want it in the presence of the Court.

The Court: Don't do it during recess, then. After you have talked to this man, make your offer when I am here sometime, Mr. Marcus.

Mr. Marcus: All right.

The Court: That is all.

(Witness excused.)

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610 CHARLES PUMPHREY was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Mr. Pumphrey, were you at any time engaged in the prepaid medical care business in Oregon? A. Yes.

Q. With what organization? A. The Pumphrey Company.

Q. What was your connection? A. I owned it.

Q. About when did that organization start business? A. Start?

Q. Yes. A. In 1926.

Q. Is it still in business? A. No.

Q. When did it cease? A. 1940.

Q. Where was its home office during the time it operated? A. In Portland.

Q. During the period of operation did it have group

contracts with employers outside of Oregon? A.
611 Some, yes.

Q. In what state or states? A. Washington.

Q. In connection with those accounts did the Pumphrey Company have occasion to correspond with or receive correspondence from its accounts in Washington? A. We corresponded with them verbally and by telephone. Very few letters are written in that sort of a business.

Mr. Marcus: May I have this marked for identification.

(A group of checks of The Pumphrey Company was thereupon marked Plaintiff's Exhibit No. 1882 for identification.)

Mr. Marcus:

Q. I show you Exhibit 1882, Mr. Pumphrey, and ask you whether that exhibit represents payments made to Washington State doctors on behalf of The Pumphrey Company as part of its doing business.

Mr. Jaureguy: I object to that on the ground that the company has been out of business for nine years. That couldn't have any effect on this case.

Mr. Marcus: It certainly has.

The Court: Overruled.

A. Those are all out-of-state

Mr. Marcus:

Q. Did you answer Yes? A. Yes.

Mr. Marcus: Your Honor, I would like to offer that exhibit in evidence.

612 The Court: Admitted on the same terms as the others.

Mr. Marcus: Yes.

(The group of checks above-referred to was thereupon received in evidence as Plaintiff's Exhibit No. 1882)

The Court: Show Mr. Jaureguy everything you have in your hand there.

Mr. Marcus: All right.

The Court: So he will know what they are, Mr. Marcus. Tell him what they are, Mr. Marcus.

Mr. Marcus: They are checks to Washington hospitals, Washington ambulance services, and a check to a drug concern out of the state.

Mr. Jaureguy: A 50-cent check to a drug concern.

The Court: You ought to be able to stipulate as to these checks.

Mr. Jaureguy: I assume he wants to prove they were out-of-state checks. I can't tell when they sent a drugstore a check for 50-cents, whether it is in Oregon, Washington or California.

Mr. Marcus: Mark these for identification.

(A group of five checks written by The Pumphrey Company was thereupon marked Plaintiff's Exhibit No. 1883 for identification; no exhibit was assigned No. 1884; a check dated July 24, 1936, written by the Pumphrey Company was thereupon marked Plaintiff's Exhibit No. 1885
613 for identification; and two checks written by The Pumphrey Company were marked Plaintiff's Exhibit No. 1886 for identification.)

Mr. Marcus:

Q. I show you Exhibit 1883 for identification and ask whether that exhibit represents payments made to State of Washington hospitals by The Pumphrey Company in the course of its business? A. Yes.

Mr. Marcus: I offer that exhibit in evidence.

The Court: Admitted on the same terms.

(Group of checks referred to was thereupon received in evidence as Plaintiff's Exhibit No. 1883)

Mr. Marcus:

Q. I show you Exhibit 1885 for identification and ask whether that exhibit represents a payment made by The Pumphrey Company to a drug concern in the State of Washington in the course of The Pumphrey Company's business? A. Yes, it does.

The Court: Admitted on the same terms.

(Check above-referred to was thereupon received in evidence as Plaintiff's Exhibit No. 1885)

Mr. Marcus:

Q. I show you Exhibit 1886 for identification and ask whether that exhibit represents payments to Wash-
614 ington ambulance service concerns. A. Yes.

Q. In the course of The Pumphrey Company's business? A. Yes.

The Court: Admitted on the same terms.

(The two checks referred to were thereupon received in evidence as Plaintiff's Exhibit No. 1886.)

Mr. Marcus:

Q. Mr. Pumphrey, how did your company operate? Did it have a staff of doctors? A. Yes.

Q. Was that staff of some size during the most of the period during which it operated? A. It was not a particularly large staff. It varied, of course, with the volume of business we had and where we had it.

Q. Mr. Pumphrey, between 1936 and 1937 did a number of doctors leave your staff? A. Yes.

Q. What did they inform you as to the reasons for their leaving?

Mr. Jaureguy: I object to that as hearsay.

The Court: Sustained.

Mr. Marcus: Your Honor, I am asking that question merely for the fact that the doctors told him that.

615 The Court: I know you are.

Mr. Marcus: Not for the truth of it.

The Court: I know you are. I know you are. You are asking what reasons they gave. Maybe he knows. Ask it another way. Do you know why they left?

A. Yes, sir.

The Court: He says he knows of his own knowledge why they left.

Mr. Marcus:

Q. Do you know why they left? A. Yes.

Q. Would you tell.

Mr. Jaureguy: If he knows it from some basis other than what they told him, why, that is all right.

The Court: Go ahead and tell if you know why they left.

Mr. Marcus: Go ahead.

A. They left because they were forced to leave by the Medical Society.

Q. Now, did the company find it difficult between 1936 and 1940 to obtain doctors to work for the company? A. It was practically impossible to obtain doctors.

Q. Did that difficulty in obtaining doctors result in difficulty in the company servicing its accounts?

Mr. Jaureguy: I object to that as calling for a conclusion of the witness.

The Court: Answer. Read the question.

616 (Last question read)

A. Made it extremely difficult. You couldn't give proper service.

Mr. Marcus:

Q. Did the difficulties which accrued to the company in servicing its accounts because of not being able to obtain doctors result in the company's ceasing to do business?

Mr. Jaureguy: I object to that as a leading question and calling for a conclusion of the witness.

The Court: Answer.

Mr. Marcus:

Q. Is your answer Yes? A. It eventually resulted in the loss of accounts, practically all of them.

Mr. Marcus: That is all.

Cross-Examination

By Mr. Jaureguy:

Q. How do you know the reason why the doctors left? A. They told me so.

Q. They told you so? A. Yes.

Mr. Jaureguy: I move that the answer be stricken.

The Court: Motion denied.

Mr. Jaureguy:

Q. Where was most of your business, Mr. Pumphrey? A. Nearly all of it in Oregon.

Q. Any particular part of Oregon? A. Almost
617 all here in Northwestern Oregon in later years. We had some down in Coos Bay—

Q. In and around Portland? A. Yes, in the vicinity of Portland, and down in St. Helens.

Q. Did you have quite a few accounts in St. Helens? A. Beg pardon?

Q. Did you have quite a little business down at St. Helens? A. Well, yes, and up in Vernonia and down in Polk County.

Q. Who were your doctors in St. Helens, do you remem-

ber? A. Well, we used all of the doctors in St. Helens at one time or another.

Q. Dr. Flynn was one of the important ones, wasn't he? A. Dr. Flynn did very little work for us in St. Helens.

Q. What about Dr. Barton? A. Dr. Barton?

Q. Barton. A. I believe he was the partner of Dr. McDonald. We originally sent Dr. McDonald down to St. Helens.

Q. Beg pardon? A. He was a partner, I believe, of Dr. McDonald, wasn't he—Barton?

Q. Yes. A. We originally sent Dr. McDonald to St. Helens.

Q. I see. And St. Johns? A. We had for awhile
618 an account out in St. Johns. I don't recall the names of the doctors out there, but that was a good many years ago.

Q. Are those places that you have named the places where you had most of your business, would you say? A. In Portland, down in Polk County, some in Coos Bay, Longview.

Q. Did you ever get a ruling from the authorities in Washington that you could do business there? A. Oh, yes.

Q. Did you enter into your contracts up there? A. Oh, yes.

Q. Whom did you get a ruling from? A. The Department of Insurance. We used their forms.

Q. You used their forms? A. The form that was specified by them.

Q. Did you qualify to do business in Washington? A. No, we didn't need to.

Q. You had your doctor up at Longview? A. That is right.

Q. A full time doctor for you? A. No.

Q. That is, as I understand it, you had a panel of doctors. What did it run? About twenty doctors at a time, or would there be that many? A. We had no full time
619 doctors at all. They were all privileged—even the doctors in our home office in Portland, in the Wilcox Building, were permitted to carry on their own private practice in addition to the work they did for us.

Q. About how many doctors would you have at a time on your panel? A. Well, I never actually counted them. I suppose 20 or 25 would be a reasonable number.

Q. That is your best estimate as to about the number? A. That is as good as any.

Mr. Jaureguy: That will be all. Thank you.

(Witness Excused)

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620 AUGUST J. ANDERSON was thereupon produced as a witness in behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. What is your occupation, Mr. Anderson? A. Business agent for the Local Union IWA.

Q. Does that local have any number or some other identification? A. 5-4.

Q. Where is its headquarters located? A. Seaside.

Q. How long have you been business agent? A. Since last October.

Q. Were you connected with that union prior to that time? A. Yes, sir.

Q. Since about when? A. 1934.

Q. Have you held any other offices with that union? A. Yes, sir.

Q. What were they? A. Treasurer and chairman—or president, rather.

Q. Where did you say that union was located? A. Seaside.

Q. In what county is that? A. Clatsop County.

621 Q. About how large a membership has that union? A. Pardon?

Q. About how many members are in that union? A. I would just offhand say about 950 members.

Q. Could you name some of the concerns in that area for which members of the union work? A. Crown-Zellerbach, G. A. Logging Company, Nehalem Logging Company, Pacific Logging Company, Allied Logging Company, Buck Mountain Logging Company, Waterhouse Logging Company, Hanson Logging Company, and VanVleet Logging Company.

Q. Now, Mr. Anderson, as business agent of the union are you in close contact with members of the union? A. That is right.

Q. Do they bring to your attention complaints and troubles they may have arising in connection with their work? A. I didn't quite get the question.

Q. Do they bring to your attention their troubles? A. That is right.

Q. Do those troubles include, or have they included the matter of doctors refusing to accept tickets of the Hospital Association? A. Right.

Q. Could you tell us what hospital associations operate in that area? A. National Hospital and Industrial Hospital.

Q. Then I gather that some or most of the con-
622 cerns down there carried prepaid medical care policies?

Mr. Jaureguy: I object to that as a leading question.
The Court: Answer. Read it.

(Last question read)

A. That is right.

Mr. Marcus:

Q. What has been the union's experience with respect to doctors in Seaside accepting tickets of these hospital associations?

Mr. Jaureguy: I object to that as hearsay.
The Court: Answer.
The Witness: I didn't quite get that.

(Last question read)

A. Could I answer that in my own way?

The Court: Yes, you better.

A. Well, the members so far have had trouble in getting the doctors—doctors have absolutely refused to accept the hospital tickets. Sometimes we have had to write in for the member; that is, get an itemized account from the doctor. And the hospital has never refused so far to pay the itemized accounts that have been sent in. In other cases the men themselves come in and we use their own name instead of the union, and the hospital in turn has sent the check direct to the men. In other words, what I mean, the men pay their hospital bill or the doctor bill, get an itemized account, and in turn turn it into the
623 hospital association, and the hospital association then in turn sends them a check.

(A group of pink statements was thereupon marked Plaintiff's Exhibit No. 1887 for identification.)

Mr. Marcus:

Q. Mr. Anderson, I show you Exhibit 1887 and ask you whether that exhibit illustrates instances where because of refusal of doctors to pay tickets, to take tickets, the members have brought their bills into the union and you have sent down the bills to the hospital association and the hospital association in turn has refunded the money?

Mr. Jaureguy: I object to that as having too many elements in the question. It is a leading question.

The Court: Read the question.

A. Just for correction, Mr. Haney, G. T. Haney, business agent before my time, has turned these bills in. I was present at the time he did it.

Mr. Marcus:

Q. Is your answer Yes, though? A. That is right.

Q. Now, Mr. Anderson, is this matter of doctors refusing to accept tickets in that area a subject of discussion at union meetings? A. Yes.

The Court: What is the date on those that just went through, what year, Mr. Anderson?

A. Eighth month, sixteenth day.

The Court: What year?

A. '46; the third month, sixth day, '46.

624 The Court: '46.

Mr. Marcus:

Q. Now, Mr. Anderson, do the men in that area, the members of the union, resent the fact that they have to go to this trouble in order to get service under the medical contract?

Mr. Jaureguy: I object to that as a conclusion of the witness and hearsay.

The Court: Suppose they do resent it. How does that apply to this case?

Mr. Marcus: Well, the frame of mind of the members have something to do with the ability of these associations to retain these contracts, your Honor. They hold meetings and elections from time to time.

The Court: All right. Do they resent it, Mr. Anderson? Do they resent it?

A. They resent the doctors' attitude.

Mr. Marcus:

Q. Now, within the last two years has the union had occasion to discuss with any representative of the Oregon Physicians' Service the matter of the medical contracts? A. I couldn't say within the exact time.

Q. Well, would you say within the last five years? A. Yes, I would say in the last three years that the Oregon Physicians' Service has had a representative down there, and it was thoroughly discussed on the floor, questions were asked. Their representative was asked if—

625 Mr. Jaureguy: Just a moment. I wish to object to that as hearsay.

The Court: Continue. Go ahead with your story.

A. The representative was asked if he could draw up a contract that would anywheres near compete with the Industrial or the National. When I asked him that question—I did myself—he says, "Well, that would be a pretty hard question to answer," but he says, "We can draw up a contract." Mr. Haney at that time asked him if he would draw up a contract and present it to the union. He stated he would. But as of to date there has been no contract presented to the union in no shape to take any action on.

Mr. Marcus: That is all.

Cross-Examination

By Mr. Jaureguy:

Q. Now, these—you named several logging companies—would you know what hospital association those logging companies had their agreements with? If I name them can you give us the information on it? A. Crown-Zellerbach is under the Industrial.

Q. Crown-Zellerbach, Industrial. The next one you named—I can't read my writing—what is the second one? George Long? A. Who?

Q. I have here, it looks like George Long & Company. A. G. A., isn't it?

626 Q. G. A. Long & Company. Who did they have their contract with? A. It is Gray & Alberta. They are under National.

Q. Nehalem Logging Company? A. I wouldn't say for sure which outfit.

Q. Would you say it was either National or Industrial? A. Right.

Q. What is that? A. It was either one or the other.

Q. Pacific Logging Company? A. I couldn't be positive which one they are under. They are under one or the other.

Q. That is either Industrial or National? A. Right.

Q. Allied—is that the name you gave? A. I don't know what hospital they are under, whether they are covered by the National or the Industrial, but they are covered by one.

Q. Buck Mountain Logging Company? A. I am not sure what hospital they are under.

Q. Is that either the Industrial or the National you think? A. I am quite positive.

Q. Waterhouse, was that the next one, Logging Company? A. He is under the National.

Q. Under the National? A. Yes.

627 Q. Hanson, was that the next one—I didn't get whether that was Anson or Hanson. A. Hanson, (spelling) H-a-n-s-o-n.

Q. Which one is that under? A. I am not sure whether he is under the National or the other, but he is under one.

Q. VanVleet? A. That is National.

Q. National. Now, are there any down there under OPS, do you know? A. Not under our jurisdiction.

Q. And your jurisdiction covers how much territory? A. Well, it covers Clatsop County—and that is not all of Clatsop County—but a good share of Clatsop County and a good part of Tillamook County.

Q. So it covers all the western part of Clatsop County, I take it? A. That is right.

Q. How far east do you go, do you know? A. Pardon?

Q. Could you give a town that is about on the border? A. Well, we come as far east as Wauna.

Q. Wauna. A. That is in the logging department, not in the sawmill department.

628 Q. And you are in the logging department, I take it? A. That is right. And we are about twenty miles this side of Elsie.

Q. And these logging companies, those are the main companies down there that your men work for, or all the companies your men work for? A. I didn't get that question.

Q. This list of logging companies that you have named and I have named, those are the logging companies that your men work for in your district? A. That is right.

Q. Now, have you any trouble getting reimbursement from the hospital associations? A. Pardon?

Q. Where you have helped the men get paid by the hospital associations have you had any trouble getting the reimbursement from them? A. Not from any of the hospitals, no.

Q. Not from any of the hospital associations? A. Pardon?

Q. You mean not from any of the hospital associations? A. That is right.

Q. And you are referring now to the Industrial and the National, of course? A. That is right.

629 Mr. Jaureguy: That is all.

(Witness Excused)

Mr. Galassi: Mrs. Boyd.

AMY E. BOYD was thereupon produced as a witness in behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Galassi:

Q. Mrs. Boyd, will you state your residence and occupation, please? A. Do you want my exact residence?

Q. Your home address. A. 6615 Southeast 19th, and my occupation is housewife.

Q. In Portland? A. In Portland.

Q. And your occupation? A. Housewife.

Q. Have you ever carried prepaid medical care coverage or protection? A. I have.

Q. How long have you had the coverage? A. I think since the early part of 1946.

Q. What type of coverage was that, family, individual or were you under a group contract? A. It was
630 individual.

Q. With what prepaid medical care organization did you have this coverage? A. Industrial Hospital Association.

Q. Did anyone at the Industrial Hospital Association or has anyone at that Association ever told you what doctor or doctors to go to under the policy you had with them? A. No, they haven't.

Q. Have you ever had occasion to go to a doctor while you have been under the Industrial Hospital Association contract? A. I have.

Q. Do you regard the ticket which is given to you upon payment of the dues under that contract as the means of avoiding payment of medical bills out of your own pocket to the extent that you are covered under the contract?

Mr. Jaureguy: Object to that as immaterial and a conclusion of the witness.

The Court: That is all right. Answer it.

A. I do.

Mr. Galassi:

Q. When was the first time you went to a doctor for treatment under your Industrial Hospital Association policy? A. Well, to my best recollection, it was in the fall of 1946.

Q. Were you living in Portland at that time?

631 A. I was.

Q. Will you please tell us what happened on that occasion. A. Well, either the first or second office call I presented my Industrial Hospital ticket to him and he refused to cooperate.

Q. Now, do you recall the name of the doctor that you went to at that time? A. It was Dr. Riddle.

Q. Was he in Portland? A. He was.

Q. And you presented him with an Industrial ticket on the first or second call? A. That is right.

Q. And what did he tell you? A. He said that he refused to cooperate with the Industrial Hospital Association.

Q. And he would not take the ticket? A. No, sir.

Q. Did he mention anything about the Oregon Physicians' Service to you?

Mr. Jaureguy: Object to that as hearsay.

The Court: Answer.

A. Yes, he did mention Oregon Physicians' Service.

Q. What did he say in that connection? A. Well, it's been quite some time, I have sort of forgotten, but I was under the impression that he accepted only the tickets of those, of the Oregon Physicians' Service.

632 Mr. Galassi: Your Honor, at this time I should like to call your Honor's attention to the fact that in

1946 and 1947 Dr. Matthew C. Riddle was the Chairman of Board of Censors of the Multnomah County Medical Society.

Q. Now, you say Dr. Riddle told you he would not take your ticket. What did you do then? A. I believe I presented the ticket to the Industrial Hospital Association myself.

Q. You mean you left the doctor's office? A. Well, no. After I had finished the call at the doctor's office then I took it to them.

Q. And what did you tell them? A. I told them he had refused to accept it.

Q. What did they tell you at the Industrial Hospital Association? A. I don't recall that they told me very much outside of perhaps just to continue with him and at the end of the treatment to—well, I just don't recall what they did tell me.

Q. Well, did they tell you that because he would not take the ticket you would have to pay for his treatment yourself?

Mr. Jaureguy: Object to that as a leading question.

The Court: Answer.

A. I think they suggested that I continue treatment and pay for it, and then they would reimburse me.

Mr. Galassi:

Q. Is that what you did? A. That is what I did.

633 Q. And after you paid this bill did you take the bill back to the Industrial Hospital Association? A. Well, I believe I did. I am unable to find the bill. I think they perhaps may have it.

Q. Do you recall the amount of this bill? A. The amount that I paid Dr. Riddle was $28.

Q. And when you took this bill back what did they tell you, did they reimburse you then? A. The Industrial Hospital Association?

Q. Yes. A. No, they didn't. In a few days I received a letter saying that they would have to have an itemized statement before they could make settlement.

Q. An itemized statement from Dr. Riddle? A. That is right.

Q. And what did you do upon receipt of that letter? A. I called Dr. Riddle's office on the phone and asked the girl if she would make out an itemized statement and send it to me through the mail.

Q. Approximately what time—was this still in 1946? A. No, that was in, I believe, in January of '47. It was after I had paid the bill.

Q. What was the girl's reply over the telephone?

Mr. Jaureguy: Object to that as hearsay.

The Court: Answer.

634 A. As near as I recall she said that she would.

Mr. Galassi: And did you receive that itemized statement? A. I did not receive it.

Q. Well, what did you do after that? A. In a week or two I again called her on the phone and told her I would be in Portland that day and that I would call at the office in person to pick up the itemized bill.

Q. You called her from your home? A. I did.

Q. How far is that from the doctor's office? A. Well, I don't know. I imagine it is in the vicinity of five or six miles from my home to the doctor's office.

Q. When you went in to pick up the itemization did you get it? A. I did not get it for awhile. I told her who I was, my mission, and she says, "I am very sorry, but I do not have time to make it up."

Q. And you left after that or— A. No, I did not. I thought I was entitled to an itemized statement and I told her so, and that I had purposely come to town for it, and that I thought that she should give it to me.

Q. Did she? A. Yes, she did, reluctantly.

Q. And what did you do when you got the itemized statement? A. I took it to the Industrial Hospital Association and gave it to the girl at the desk.

635 Q. And did they reimburse you for the amount of the bill? A. They reimbursed me for a portion of . . .

Q. Do you recall the date when you received the reimbursement? A. I believe it was in May, 1947.

Q. That was some five or six months after you went to the doctor? A. That is correct.

Q. And after you had paid him yourself? A. That is correct.

Q. Do you still carry Industrial Hospital Association coverage? A. I do.

Mr. Jaureguy: I am sorry, I didn't hear that.

The Court: Yes.

A. Yes.

Mr. Galassi:

Q. Have you ever been back to Dr. Riddle since that time? A. No, I have not.

Q. Why not?

The Court: We will have the afternoon recess.

(Short recess)

Mr. Marcus: That is all. Your witness.

Mr. Jaureguy: There will be no questions, Mrs. Boyd. Thank you.

(Witness Excused)

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636 Mr. Marcus: Your Honor, I am going to have to offer an apology. Mr. Jaureguy pleasantly surprised me by the shortness of his cross examination, with the result that today I do not have any more witnesses.

Perhaps I could put this offer in at this time.

The Court: What is your offer?

PLAINTIFF'S OFFER OF PROOF

Mr. Marcus: With respect to Plaintff's Identification No. 1881, with the exception of the fourth paragraph on Page 3, we offer this as an exhibit showing what took place at a meeting between a group of doctors and a group of hospital representatives on January 31st and February 3, 1944, in this city.

Our offer would include the statement by Mr. Nelson that this document, with the exception noted, is a true record of what did occur at that meeting.

Your Honor, the question has been raised as to whether this should be included in with the rejected exhibits and not in the record. I have no feeling either way, except that these things get lost so easily because they are not in with the regular documents. I would prefer having it in the record.

The Court: The offer is rejected and the exhibit is rejected. It has been marked for identification. It need not be included in the record.

Don't you have any witnesses in the back of the room?

637 Mr. Marcus: No, your Honor.

The Court: What are you going to offer during the rest of the week, what type of testimony?

Mr. Marcus: Your Honor, there will be testimony with respect to the difficulty of some doctors getting into the Medical Society, because of being associated with these hospital associations.

We will have testimony of several employers and the testimony of other union men. That, generally, is the type of testimony.

The Court: What are the employers and the union men going to testify to?

Mr. Marcus: Also, two more doctors. These employers would testify to the type of difficulties they have had as a result of doctors not accepting tickets.

The Court: That does not sound like a week's work. This is just Tuesday at 3:00 o'clock. If there are several doctors and several employers, we ought to be able to hear those in half a day.

Mr. Marcus: There will also be several union men. Also, I had forgotten this: We expect to have some witnesses from the Eagles organization this week with respect to their troubles with the Society.

The Court: Your big guns are out of the way now, and we ought to be able to put through a dozen witnesses
638 a day here.

Mr. Marcus: Your Honor, to be quite frank I was surprised at the shortness of Mr. Jaureguy's cross examination of this witness. He had been cross examining the others at some length.

The Court: May you not be wrong in your idea of how long your case will take? Can't you finish it this week rather than next week?

Mr. Marcus: The difficulty there, your Honor, is getting the people, all the people we want this week. I just do not think at this late date we can get all the people we want this week. I do not think we could finish it this week, even at the rate we have been going.

The Court: We do not usually work just four hours a day.

Mr. Marcus: Well, your Honor,—

The Court: You ought to be sure you have plenty of witnesses to use up the four hours we have allotted.

Mr. Marcus: Of course, your Honor, I am preparing this list of exhibits with respect to the particular parts we are offering. I realize that it is a waste of your time, but at least I will utilize this time. It just so happens—

The Court: I just want to make sure that there are plenty of witnesses here the rest of the week to use the four hours that are allotted a day.

(Thereupon, at 3:15 o'clock P.M., an adjournment was taken until the following morning, October 26, 1949, at 10:00 o'clock A.M.)

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639 Court reconvened at 10:00 o'clock A.M., Wednesday, October 26, 1949.

Mr. Marcus: Your Honor, at this time I would like to have the Multnomah County Medical Society produce all its records, including correspondence, for 1943 and '44 relating to Dr. P. E. Pemberton of Portland, especially any matter which has to do with the conciliation or disciplinary proceedings or in connection with his application for membership.

The Court: You see what you can do about that, Mr. Jaureguy.

Mr. Jaureguy: Yes, I will, although I hope that counsel have investigated that case sufficiently so that they know what they are doing, because there are some angles of that case that would be rather distressing to bring out.

Mr. Marcus: We have no intention—

The Court: Don't tell me your troubles. Why don't you discuss it with Mr. Marcus at the recess, whatever you have in mind.

Put on a witness.

Mr. Marcus: I would like to offer in evidence at this time the two transcripts which Mr. Jaureguy furnished us yesterday.

The Court: Admitted on the same terms as the
640 other exhibits.

(Transcript of proceedings "Before the Board of Censors of the Multnomah County Medical Society in re Doctors Suckow, Leonard and Tharaldsen," was thereupon marked Plaintiff's Exhibit 1888; transcript of proceedings "Before the Board of Censors of the Multnomah County Medical Society in re Doctors Suckow, Leonard, Tharaldsen and Sabin," was thereupon marked Plaintiff's Exhibit 1889.)

Mr. Marcus: Your Honor, Mr. Anderson of the union local in Seaside testified yesterday, and I would like to connect up his testimony with one of the exhibits by reading from Exhibit 52, which is a letter from Dr. Ward of Seaside, Oregon, dated 8-1-47, to Mr. E. F. Shipley. "Please send this bill to your insurance company and have them write a check payable to you and not to Dr. Ward. Due to a ruling of the Clatsop County Medical Association, no doctor can accept checks from the company. They pay you and you pay the doctor."

Mr. Jaureguy: Who signed it?

Mr. Marcus: That is on the letterhead of Dr. Ward.

Mr. Jaureguy: I didn't ask that. I asked who signed it. Let me see it.

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641 LELAND V. BELKNAP was thereupon produced as a witness in behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Dr. Belknap, are you licensed to practice in Oregon? A. Yes, sir.

Q. When did you receive your license? A. August, 1919.

Q. Are you licensed to practice in any other state? A. No.

Q. Now, Doctor, prior to the year 1936 or 1937 had you ever been charged with unethical practice? A. No, sir.

Q. About that time were you treating members of the National Hospital Association? A. Yes, sir.

Mr. Marcus: I will have these marked for identification.

(A file of correspondence, Multnomah County Medical Society to Dr. Leland V. Belknap, between March 31, 1937, and August 2, 1937, was thereupon marked Plaintiff's Exhibit 1890 for identification.)

Mr. Jaureguy: I think these are the originals of others that have already been marked.

642 Mr. Marcus: I don't believe we had all of these, Mr. Jaureguy.

Q. During the year 1937 were you called to appear before the Board of Censors of the Multnomah County Med-

ical Society because of your treating patients or members of the National Hospital Association? A. Yes, sir.

Q. I show you Exhibit 1890 and ask whether this is the correspondence received in that connection. A. Yes, sir.

Mr. Marcus: I offer that in evidence.

The Court: You say a duplicate is already in?

Mr. Jaureguy: I know many of them are already in provisionally.

Mr. Marcus: Some of them I believe are not, your Honor.

The Court: Admitted on the same terms.

(The file of correspondence above-referred to was thereupon received in evidence as Plaintiff's Exhibit 1890.)

Mr. Marcus:

Q. Now, Doctor, were you expelled from the Society because of your treating members of the National Hospital Association? A. Yes, sir.

Q. Doctor, have you since that time applied for
643 reinstatement in the Society? A. Yes, I did about—I have forgotten how long ago it was. I think it was a couple of years ago, approximately, as near as I recall.

Q. Did you ever hear anything further in that connection? A. Nothing.

Q. Now, Doctor, the defense counsel early in the case took the position that not being a member of the Medical Society has no particular significance, and I would like to explore that matter with you.

Mr. Jaureguy: I object to that as a leading question.

Mr. Marcus: There isn't any question.

The Court: Go ahead.

Mr. Marcus:

Q. Could you tell us in what ways that has, if it has, adversely affected your practice. A. Well, it hurts your prestige, it hurts you financially, especially one section of the Medical Society, the OPS, where they won't allow you to take cases that come to you.

Mr. Marcus: I would like to have this marked.

(Letter dated July 19, 1949, from Oregon Physicians' Service was thereupon marked Plaintiff's Exhibit 1891 for identification.)

Mr. Marcus:

Q. Dr. Belknap, I show you Exhibit 1891 marked for identification and ask whether this was turned over to you by the addressee? A. Yes, it was.

644 Mr. Marcus: I would like to offer that exhibit in evidence.

The Court: Admitted on the same terms.

(The letter above-referred to was thereupon received in evidence as Plaintiff's Exhibit 1891.)

Mr. Marcus: That has some significance, your Honor, and I would like to read that particular one. This is a letter of July 19th, 1949, from the Oregon Physicians' Service to someone, to a member of the service who had been treated for illness. "The benefits of the "surgical, limited medical and hospital' plan are provided only when the member is under the care of a listed cooperating Oregon Physicians' Service physician, surgeon or consulting specialist. Since Dr. L. Belknap is not a cooperating Oregon Physicians' Service doctor, we cannot assume responsibility for his services nor for any hospital or other expenses incurred while under his care."

Q. Now, Doctor, since your expulsion from the Medical Society what has been your experience with respect to malpractice insurance? A. Well, the rate has increased; just how much I don't recall, but it is higher.

Q. Have you had any difficulty in getting that kind of insurance? A. Dr. Sabin got it through a friend of his. I don't know just what the procedure was at the time.

645 Q. At the time you were expelled what kind of malpractice insurance did you have? A. It was the group policy that the Medical Society carried, as I recall.

Q. Did you attempt to retain that sort of malpractice insurance? A. Yes, sir.

Q. Were you able to? A. No.

Q. Doctor, I understand that there is in the City a doctors' telephone exchange. Is that so? A. That is right.

Q. Not being a member of the Medical Society, are you able to be on that exchange? A. No. I moved to another one.

Q. Now, Doctor, have you as a result of not being a member of the Society been affected with respect to your relations with the American Medical Association? A. I was expelled.

Q. What about the Journal of the American Medical Association? A. They wouldn't let me have it.

Q. Now, since your expulsion have you attended scientific meetings of the Medical Societies? A. No.

Q. Why is that? A. I didn't want to undergo the
646 embarrassment.

Mr. Marcus: That is all.

Cross Examination

By Mr. Jaureguy:

Q. Were you expelled, Doctor, or did you resign? A. No, I was expelled.

Q. You were expelled about the same time Dr. Sabin was? A. I think about that time or shortly afterwards.

Q. You have continued to be on the staff of St. Vincent's Hospital ever since, haven't you? A. I have, yes.

Q. Now, wasn't it considerably longer than a couple of years ago you applied for membership in the Society? A. It may have been a little longer. I don't recall how long ago it was. It was just the last few years.

Q. And you haven't heard anything about it? A. No.

Q. I think Dr. Chuinard is chairman of the committee now. Have you spoken to him about it? A. No, I haven't.

Q. You know how these societies are; these things get misplaced. A. No, I really don't know. I haven't talked to him about it. I didn't know he was on.

Q. Now, this notice to the woman that I assume was your patient says the benefits are limited to those who are
647 listed as cooperating Oregon Physicians' Service physicians. A lot of the members of the Society you know, I suppose, are not on the cooperating list, too? A. I understand that.

Q. Have you ever applied to get on a cooperating list? A. I did when it first started and they turned it down. In fact, one man came to me and asked me, and then later they found out I wasn't in the Society and they didn't let me in.

Q. You continued, as I understand it, to work for the National Hospital Association? A. Up until Dr. Sabin's death in December, 1948.

Q. Then you resigned? A. I see them as patients, just like a few Industrial or Blue Cross or anyone, but I don't have any salary like I had before.

Q. You take tickets? A. What?

Q. You take their tickets, I mean? A. Yes, some of them bring tickets. Some of them pay and sometimes the hospital pays. I have never found out just how they worked it.

Q. What do you do? Do you bill the Hospital Association or bill the patient? A. They do both.

Q. You say "they"? A. My nurse or my book-
648 keeper. Pardon me.

Q. Sometimes she bills the patient and sometimes she bills the Hospital Association? A. That is right.

Q. I suppose that depends upon whether the patient brings in a ticket? A. I really don't know.

Q. When she bills the patient does the Hospital Association send their check to the patient or send the check to you? A. Oftentimes he will send it to the patient and then the patient will send it to me.

Q. Does it make any particular difference in your method of operation or anything else as to whether one course of procedure is followed or the other? A. No.

Q. The net result is the same? A. That is right.

Q. It doesn't make any particular additional work or anything of that kind for your office one way or the other? A. Well, it is a lot of work. They have so many different—all different policies. Some of them are supposed to bill the patient; some of them are supposed to bill the Hospital Association. It takes a lot of bookkeeping, yes, if that is what you mean.

Q. It takes a lot of research sometimes for the
649 nurse to determine whether she should bill the patient or bill the Hospital Association? A. Well, no. No, I don't understand just what kind of contracts they have, but I know this: That if it is a contract like a logging company, you bill the Hospital Association. If it is an individual they have different agreements with the individuals. Just what they are I don't know. I never read one.

Q. The nurse keeps track of those? A. She is supposed to.

Q. And sends a bill, whether it is sent to the Hospital Association or the patient? A. That is right.

Q. By the way, this question arose a day or two ago. Can you give us the date that Dr. Sabin died? A. December the 8th, 1948.

Q. 1948? A. Yes.

Q. And it was then that you resigned the salaried position? A. I never said anything. Our check just quit coming.

Q. Oh, I see. That is, they didn't fire you and you didn't resign? A. Yes.

Q. The checks just quit coming? A. That is right.

650 And thereafter you got your checks on a fee basis?

A. That is right.

Q. Either from the patient or from the Hospital Association? A. That is right.

Q. And you also handled the Industrial Hospital Association patients the same way? A. Yes, sir.

Q. Some of them you billed to the Association and some of them you billed to the patient? A. Well, I really can't answer that. I don't know how the nurse bills that.

Q. Has the National Hospital Association ever requested that you do not bill the patient, but bill them directly? A. No.

Q. Now, they have two doctors' telephone exchanges, don't they? A. Yes.

Q. Aren't you on either of them? A. I am on the Beacon 3181. That is not the one that is run by the Medical Society.

Q. I see. There are about as many doctors on that one as on the other one, aren't there? A. I wouldn't know, really.

651 Mr. Jaureguy:

Q. Did you ask to subscribe for the Journal of the American Medical Association, or do you mean to say they just quit sending it to you? A. No. As I recall that, I sent a check and they sent it back or else they wrote me a letter and told me that I couldn't get it.

Q. Well, Dr. Sabin got it all the time, didn't he? A. Not after we were expelled.

Q. Are you sure of that? A. Not that I know of. I know I didn't get it.

Q. And I don't know as you would know this, but doesn't the National Hospital Association get the Journal? A. I don't know.

Q. You haven't made any investigation of the rates of the different companies on malpractice insurance? A. I know it was higher. I remember paying it here.

Q. That is a particular policy from the particular company you got? A. Yes. It was higher.

Q. But I mean you didn't inquire from other companies what their rates were? A. No, we just inquired this one company.

Mr. Jaureguy: That will be all.

652 Redirect Examination

By Mr. Marcus:

Q. Just one question, Doctor. Were you associated with Dr. Sabin at St. Vincent's? A. For thirty years, yes.

Q. And after both of you were forced out of the Society, to your knowledge did anything occur with respect to Dr. Sabin and his connection with the hospital? A. Well, for years Dr. Sabin was head of the staff and after this happened he was nominated and he was asked not to run and he got up and resigned.

Q. And to your knowledge was that because of his not being a member of the Society? A. That was the cause.

Mr. Marcus: That is all.

Recross Examination

By Mr. Jaureguy:

Q. You mean somebody asked him not to run for the position of head of the staff? A. The staff or office on the staff, yes.

Q. And whoever mentioned that as a reason—A. Yes, sir.

Q. And you got that information where? A. I got it from Dr. Sabin, and he was instructed—I can tell you who told him, if you wish.

653 Q. No. I just wanted—A. Yes. In fact, I got it from other doctors, too, directly telling him not to run.

Q. He continued there as a member of the staff? A. Oh, yes. I think they call it members of the courtesy staff.

Q. You think so? A. That is as far as I—

Q. You are not correct on that, are you, Doctor? A. Well, we still are on the staff there, and the other hospital.

Q. And after the doctor died, why the hospital and the doctors connected with it and other doctors started to raise a fund as a memorial to him; that is correct? A. That is true.

Q. In other words, Dr. Sabin was very highly respected and that respect continued up to and after his death? A. That is right.

Mr. Jaureguy: That is all.

(Witness excused.)

Mr. Weinstein: Dr. Palmer.

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654 C. HAROLD PALMER was thereupon produced as a witness in behalf of Plaintiff and, being first duly sworn, was examined and tesified as follows:

Direct Examination

By Mr. Weinstein:

Q. Dr. Palmer, where did you go to medical school? A. University of Oregon.

Q. Where did you intern? A. St. Vincent's Hospital.

Q. In what states are you licensed to practice? A. Oregon.

Q. Are you a member of any medical society? A. Yes, sir.

Q. Which ones? A. The County and State and AMA.

Q. And how long have you been a member? A. Since about 1920.

Q. Have you ever served on any committees in the medical societies? A. A few.

Q. Which ones have they been? A. Oh, I think I was Councilor of the City and County Medical Society about 1921, '22.

Q. Do you know any of the others? A. I don't recall of any.

655 Q. In that connection does the year 1943 mean anything to you? A. No.

Q. Have you treated members of prepaid medical care plans? A. Yes, sir.

Q. Can you name the plans that these have been? A. There was C. H. Weston Company, National Hospital Association, Industrial Hospital Association, various insurance companies, State and Federal accidents.

Q. Calling your attention to the year 1940, did you attend a meeting held in the office of the Multnomah Medical Service Bureau in the Pittock Block? A. Yes, sir.

Q. What was the occasion for your being there? A. Well, I think they were unhappy because we were doing work for the National and Industrial and they wanted to see if we wouldn't discontinue doing that.

Q. Well, let me ask you who was present at this meeting, do you recall? A. Well, there were several there. There was Dr. John Besson, Dr. E. E. Gambee, Dr. Dammasch, Dr. Henton. Then there was a group from the Peninsula,

doctors. As I recall, there was Dr. Boyd, Dr. Phillips, Dr. Staats and Dr. Swart, I believe Dr. Gilstrap, and I believe Dr. Bendshadler.

Q. Now, these last doctors that you mentioned were St. Johns' doctors practicing in the St. Johns area? A.
656 That district, yes, sir.

Were they called to this meeting? A. I couldn't say. They were there.

Q. Well, you mentioned Drs. Gambee, Besson and Henton. Now, are they also St. Johns doctors? A. No.

Q. But you say they were present at this meeting? A. Yes.

Mr. Weinstein: Your Honor, may I call your attention that Dr. E. E. Gambee at this time was on the Board of Censors of the Multnomah County Medical Society. Dr. Besson is a defendant and he was connected with the Multnomah Medical Service Bureau, and Dr. Henton was a member of the Executive Board of the Multnomah Medical Service Bureau, and he was also Chairman of the Multnomah County Medical Society Committee on Medical Economics all during this period.

Q. Dr. Palmer, can you tell us what occurred at that meeting? A. Well, I arrived a little late, and at the time I arrived Dr. Gambee was suggesting how the medical men could notify the companies who were carrying the other hospital plans and notify them that after their contract was up that we would not render service to their employees any longer. As I recall, there was something that was asked as if we felt as though we could render the same service to the members who were under the Multnomah Medical Service Bureau as we rendered
657 to the other hospital associations.

Q. During that meeting were you told that you might be expelled from the Medical Society if you did not comply with the request that you just mentioned? A. Well, I asked Dr. Besson, who I take it was the chairman of the meeting, what he was going to do about it, and he says, "Well, I think they are planning on expelling you from the Medical Society if you don't discontinue doing work for the other hospital associations." He says, "Isn't that right, Dr. Gambee?" And Dr. Gambee says, "Yes, I think that is what they are planning on doing." He says, "That is what they have been doing with the other medical men." And, as I recall, I says, "Well, what are you going to do about it?"—No. I says, "Why don't you do

it then?" And he says, "Well, I think that is what they are planning on doing." I says, "Oh, no, you won't. You are afraid to." He says, "Well, I don't think so." And I says, "Well, I will tell you why you are afraid to. In the first place, if you expel us out of the Medical Society you will automatically throw us out of the Multnomah Medical Service Bureau, and if you do that you won't be able to get any more contracts in our district, and if you do that you will probably lose all you have; and I think we can take five or six men out of this group and we can throw any contract any way we want." I says, "However, we haven't done that and we don't wish to do that."

658 And, then, as I recall, Dr. Henton tried to persuade us into changing our mind. I say "us"—myself—I take it it was open to all of us. And he told us he felt as though we should reconsider it. As I recall, I told him that I didn't feel as though that I would care to bite the hand that had been helping to feed me for about twenty-five years.

Q. Did you later attend a meeting of the Board of Censors of the Multnomah County Medical Society? A. About a month later.

Q. I show you Pre-Trial Exhibit No. 1057 and I ask you whether or not that is a transcript of the proceedings before the Board of Censors a month later.

The Court: You will stipulate that it is, Mr. Jaureguy?

Mr. Jaureguy: If I can see it. If it came from our files and says it is, why, it is.

The Court: Show it to Mr. Jaureguy.

Mr. Jaureguy: Yes, I think this is one of them they demanded of us to put in evidence.

The Court: Do you want to put it in?

Mr. Weinstein: It is already offered, your Honor. I just wanted to be sure that was the meeting he was talking about now.

The Court: All right.

(Plaintiff's Pre-Trial Exhibit No. 1057 was received in evidence.)

Mr. Weinstein:

Q. Dr. Palmer, what is your understanding about
659 the effect that not belonging to a medical society would have on malpractice insurance? A. Well, it is hearsay with me, but I understand that it is higher.